

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

**Applied Digital Corp.**

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

**FORM 8-K**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): January 13, 2025

**APPLIED DIGITAL CORPORATION**

(Exact name of registrant as specified in its charter)

Nevada  
(State or other jurisdiction  
of incorporation)

001-31968  
(Commission  
File Number)

95-4863690  
(IRS Employer  
Identification No.)

3811 Turtle Creek Blvd., Suite 2100  
Dallas, TX  
(Address of principal executive offices)

75219  
(Zip Code)

Registrant's telephone number, including area code: 214-427-1704

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

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

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

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

| <u>Title of each class</u> | <u>Trading Symbol(s)</u> | <u>Name of each exchange on which registered</u> |
|----------------------------|--------------------------|--|
| Common Stock               | APLD                     | Nasdaq Global Select Market                      |

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

Emerging growth company

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

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## Item 1.01 Entry into a Material Definitive Agreement.

### *Unit Purchase Agreement*

On January 13, 2025, Applied Digital Corporation (the “Company”) and APLD HPC Holdings LLC, an indirect wholly-owned subsidiary of the Company (the “Issuer”) entered into a Unit Purchase Agreement (“UPA”) with MIP VI HPC Holdings, LLC (the “Purchaser”), which is an affiliate of funds and investment vehicles managed by entities within Macquarie Asset Management (“MAM”). Pursuant to the terms of the UPA, the Issuer agreed to sell to the Purchaser at the Closing (as defined in the UPA), 225,000 Preferred Units in the Issuer (the “Preferred Units”) at a price per Preferred Unit of \$1,000, for an aggregate purchase price of \$225,000,000. In connection with the issuance of the Preferred Units, and for no additional consideration, the Issuer agreed to issue to the Purchaser at the Closing such number of Common Units of the Issuer representing, in the aggregate, fifteen percent (15%) of the fully diluted common equity of the Issuer as of immediately following the Closing (the “Common Units”). The Closing is conditioned upon, among other things, the Issuer executing a lease with a hyperscaler for the first 100 MW on the ELN Campus (as defined in the UPA), in a form acceptable to the Purchaser, as well as the parties finalizing and executing a limited liability company agreement for the Issuer (the “LLCA”), in which the parties intend to set forth, among others, the following principal terms:

- The Purchaser’s right to invest an additional \$675 million to fund the development of the remaining 300 MW of its ELN Campus following execution of leases approved by the Purchaser within 15 months of Closing, which, when combined with the \$225 million to be funded at Closing for the first 100 MW on the ELN Campus, comprises the initial \$900 million investment, at the investment rate of \$2.25 million per MW, to be matched by the Company’s contribution of \$1.0 million per MW.
- The Purchaser’s right to invest up to an additional \$4.1 billion on the same terms of the Preferred Units to provide a portion of the equity financing for future HPC datacenter development projects presented to the Purchaser by the Issuer during the 30 months following the Closing, at the investment rate of \$2.25 million per MW, to be matched by the Company’s contribution of \$750,000 per MW.
- The Preferred Units are to accrue a dividend at a rate of 12.75% per annum, paid in kind or, at the Issuer’s election, cash (subject to excess cash distributions), which is to increase by 87.5 basis points on the fifth and sixth anniversaries of the Closing, if still outstanding.
- The Preferred Units are to carry a minimum 1.80x multiple of invested capital liquidation preference, inclusive of the value of the Common Units issued to the Purchaser at Closing.
- The Preferred Units and the Common Units are to be redeemable after the fifth anniversary of the Closing for (A) the greater of (i) the accreted amount, *plus* any accrued and unpaid dividend, *plus* the fair market value of such Common Units, *plus* certain indemnity payments by the Issuer for breaches of business representations of the Issuer under the UPA, if any, and (ii) 1.80x multiple of invested capital *minus* (B) certain indemnity payments by the Company for breaches of fundamental representations of the Company and the Issuer under the UPA.

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- If the Preferred Units and Common Units are outstanding on the seventh anniversary of the Closing, the LLCA is intended to provide for the ability of the Purchaser to require the Issuer to commence a customary marketed sale process managed by an independent investment bank, where the proceeds of any such sale are to be used to redeem the Preferred Units and the Common Units on the terms set forth above.

- The Company (through a wholly owned subsidiary) is to be entitled to a cash distribution upon completion of the construction of the ELN Campus with respect to the portion that is funded by the Purchaser in an amount equal to \$1.0 million per MW funded *minus* certain projects costs.

- The Purchaser is entitled to certain distributions of excess cash following the “ready for service” date of the ELN Campus to pay its dividends on the Preferred Units.

The LLCA is also intended to provide for customary step-in rights, governance and management rights, pre-emptive rights, information rights, co-sale rights, transfer restrictions, including rights of first offer and refusal in favor of each of the members thereunder. The LLCA is intended to provide for a management incentive plan to support employees and other service providers of the Issuer.

The UPA contains customary representations, warranties and covenants, including, among others, indemnification by the Company and the Issuer and a ‘no shop’ clause, and certain termination rights of the parties, including the Purchaser’s obligation to pay an \$11.25 million reverse termination fee (the “RTF”) upon termination of the UPA in certain circumstances. The UPA allows for a cash distribution at the Closing to the Issuer (the “Closing Distribution”) to recover a portion of its funded equity in the ELN Campus, in an amount equal to the sum of its initial site capitalization, currently estimated to be \$712 million, *minus* the Issuer’s initial funding requirement in the amount of \$100 million, *minus* project-level debt repayment, currently in the amount of \$180 million, consisting of \$150 million in outstanding principal and a 1.20x repayment premium (subject to increase over time).

The UPA also provides for the Company and the Issuer to carry out an internal restructuring to segregate the HPC Segment’s assets and liabilities before Closing (the “Pre-Closing Restructuring”), and that the parties are to negotiate the terms of and execute the LLCA, a corporate services agreement between the Company and the Issuer, the Pre-Closing Restructuring Plan and a management incentive plan aggregator operating agreement (collectively, the “Transaction Documents”) as a condition to closing. The UPA also provides for other customary closing conditions, which include the Issuer executing a lease with a hyperscaler for the first 100 MW on the ELN Campus, in a form acceptable to the Purchaser. No assurance can be given that the parties will successfully negotiate the terms of the foregoing documents, or that the Issuer will enter into any such lease or that any such lease would be on terms acceptable to the Purchaser. If the parties do not finalize the negotiation and agree on the terms of the Transaction Documents in form and substance mutually satisfactory to the parties, on or before February 15, 2025, then either the Purchaser or the Issuer may terminate the UPA, with no further liability to the other, in which case, the Closing will not occur.

In addition, the UPA provides for the Company to issue to the Purchaser at Closing two warrants to purchase 4,458,069 shares each, for a total of 8,916,138 shares of the Company’s common stock, par value \$0.001 (the “Common Shares”) at the exercise price of \$8.29 per share, a form of which is set forth as Exhibit B to the UPA (collectively, the “Warrants”). The first warrant will become exercisable upon the Purchaser funding the full \$900 million in the ELN Campus, but in no event before the six-month anniversary of the Closing. The second warrant will become exercisable only if the first warrant becomes exercisable, and if the following additional conditions are met: one or more leases with a certain hyperscaler is/are executed for the first 100 MW of capacity on the ELN Campus and all or a portion of the remainder of the ELN Campus, where the lease(s) is/are for no less than 250 MW of capacity and at least 100 MW of such capacity is pursuant to a modified gross or triple net lease. The Common Shares issuable upon exercise of the Warrants are subject to customary registration rights pursuant to a registration rights agreement to be executed and delivered at Closing, the form of which is attached to the UPA (the “Registration Rights Agreement”).

In connection with the execution and delivery of the UPA, the Purchaser has delivered to the Issuer a customary equity commitment letter (the “ECL”) from funds and investment vehicles managed by entities within MAM with respect to Purchaser’s \$225 million funding obligation under the UPA and its up to \$675 million funding obligation under the LLCA (in each case, subject to the conditions set forth in the UPA and the LLCA), and a limited guarantee in favor of the Issuer with respect to the RTF (the “LG”). The ECL contains customary third-party beneficiary rights in favor of the Issuer.

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Closing is expected to occur within fifteen (15) Business Days after the satisfaction of the conditions specified in the UPA described above. Proceeds received by the Issuer at Closing are to be used, among other things, for purposes of funding the debt repayment referenced above, the Purchaser’s and Issuer’s transaction expenses, the Closing Distribution (as defined in the UPA), certain transfer taxes (if any) and development and operation of ELN Building A (as defined in the UPA).

The foregoing descriptions of the UPA, the Warrants and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to each of the foregoing filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

### **Item 3.02 Unregistered Sales of Equity Securities.**

The information set forth in “Item 1.01 Entry into a Material Definitive Agreement” relating to the issuance of the Warrants and the underlying Common Shares is incorporated by reference herein in its entirety.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of any offer to buy the Common Shares, nor shall there be an offer, solicitation or sale of the Common Shares in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such state.

#### **Item 8.01 Other Events.**

##### *Press Release*

On January 14, 2025, the Company issued a press release announcing entry into the UPA and related transactions. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

#### **Forward Looking Statements**

This Current Report on Form 8-K and other reports filed by the Company from time to time with the SEC contains “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995 regarding, among other things, the closing of the transaction described herein, future operating and financial performance, product development, market position, business strategy and objectives and the closing of the transaction described herein. These statements use words, and variations of words, such as “will,” “continue,” “build,” “future,” “increase,” “drive,” “believe,” “look,” “ahead,” “confident,” “deliver,” “outlook,” “expect,” “project” and “predict.” Other examples of forward-looking statements may include, but are not limited to, (i) statements of Company plans and objectives, including our evolving business model, or estimates or predictions of actions by suppliers, (ii) statements of future economic performance, (iii) statements of assumptions underlying other statements and statements about the Company or its business, and (iv) the Company’s ability to effectively apply the net proceeds from the transaction as described above. You are cautioned not to rely on these forward-looking statements. These statements are based on current expectations of future events and thus are inherently subject to uncertainty. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the Company’s expectations and projections. These risks, uncertainties, and other factors include: our ability to complete construction of the Ellendale HPC data center; our ability to complete the negotiation and execution of the definitive transaction documents required to close the MAM investment; our ability to raise additional capital to fund the ongoing data center construction and operations; our dependence on principal customers, including our ability to execute leases with key customers, including leases for our Ellendale HPC campus; our ability to timely and successfully build new hosting facilities with the appropriate contractual margins and efficiencies; power or other supply disruptions and equipment failures; the inability to comply with regulations, developments and changes in regulations; cash flow and access to capital; availability of financing to continue to grow our business; decline in demand for our products and services; and maintenance of third party relationships. Information in this Current Report on Form 8-K is as of the dates and time periods indicated herein, and the Company does not undertake to update any of the information contained in these materials, except as required by law.

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

(d) Exhibits.

| <b>Exhibit No.</b> | <b>Description</b>  |
|--------------------|---|
| 10.1*              | <a href="#">Unit Purchase Agreement, dated January 13, 2025, by and among Applied Digital Corporation, APLD HPC Holdings LLC and MIP VI Holdings II, LLC.</a> |
| 99.1               | <a href="#">Press Release, dated January 14, 2025.</a>  |
| 104                | Cover Page Interactive Data File (embedded within the Inline XBRL document).  |

\* The schedules to this agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

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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.

**APPLIED DIGITAL CORPORATION**

Date: January 14, 2025

By: /s/ Saidal L. Mohmand

Name: Saidal L. Mohmand

Title: Chief Financial Officer

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**UNIT PURCHASE AGREEMENT**

**BY AND AMONG**

**APPLIED DIGITAL CORPORATION,**

**APLD HPC HOLDINGS LLC**

**and**

**MIP VI HPC HOLDINGS, LLC**

**Dated as of January 13, 2025**

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## UNIT PURCHASE AGREEMENT

THIS UNIT PURCHASE AGREEMENT (this “Agreement”) is made as of January 13, 2025 (the “Effective Date”), by and among APLD HPC Holdings LLC (f/k/a APLD ELN-02 Holdings LLC), a Delaware limited liability company (the “Issuer”), MIP VI HPC Holdings, LLC, a Delaware limited liability company (the “Purchaser”) and Applied Digital Corporation, a Nevada corporation (“APLD”). The Issuer, the Purchaser and APLD are referred to herein sometimes individually as a “Party” and together as the “Parties.” Certain other capitalized terms used herein are defined in Section 1.4 and throughout this Agreement.

### RECITALS

**WHEREAS**, as of the Effective Date, (i) the Issuer is governed by the Amended and Restated Limited Liability Company Agreement, entered into as of December 27, 2024 (the “Existing LLC Agreement”), by APLD Holdings 2 LLC, a Delaware limited liability company and an indirect wholly-owned Subsidiary of APLD (“APLD Holdings”), as the Issuer’s sole member and (ii) APLD Holdings owns one hundred percent (100%) of the issued and outstanding membership interests in the Issuer and is the Issuer’s sole member;

**WHEREAS**, prior to the Closing, the Issuer, APLD and certain of their respective Affiliates will engage in a series of internal restructuring transactions which shall be mutually agreed upon by the Parties in their respective sole discretion (the “Pre-Closing Restructuring Plan” and such transactions, collectively, the “Pre-Closing Restructuring”) for the purposes described in Section 5.12 herein;

**WHEREAS**, as a condition and inducement to the Parties’ willingness to enter into this Agreement and to consummate the Transactions, APLD Holdings, the Issuer, the Purchaser and Management Aggregator shall, effective as of immediately prior to the Closing, enter into an amended and restated limited liability company agreement of the Issuer in a form to be mutually agreed upon by the Parties in their respective sole discretion (the “Second A&R LLC Agreement”), as contemplated by and in accordance with the terms of this Agreement, to, among other things: (i) designate new classes of units of membership interests in the Issuer as “Preferred Units,” “Common Units” and “Profits Units” having the respective rights, designations, preferences, privileges, obligations, terms and

conditions set forth therein; (ii) reflect the reclassification of all of the outstanding membership interests in the Issuer currently held by APLD Holdings into newly designated Common Units; (iii) reflect the acquisition of Preferred Units and Common Units by the Purchaser pursuant to this Agreement and the Purchaser's commitment to purchase additional Preferred Units and Common Units on the terms and subject to the conditions set forth therein; (iv) reflect the admission of the Purchaser and the Management Aggregator as a member of the Issuer; (v) reflect APLD's obligation to make certain mandatory capital contributions to the Issuer; and (vi) set forth the terms and conditions of the ownership, management and operation of the Issuer from and after the Closing;

**WHEREAS**, at the Closing, the Issuer desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Issuer, the Subject Units, all on the terms and subject to the conditions set forth herein;

**WHEREAS**, concurrently with the execution of this Agreement, and as a material inducement to the willingness of the Issuer and APLD to enter into this Agreement, the Purchaser and the Macquarie Equity Investors have executed and delivered that certain equity commitment letter to the Purchaser of even date herewith (the "Purchaser Equity Commitment Letter"), pursuant to which, subject to the terms and conditions therein, the Macquarie Equity Investors have agreed to provide equity financing, directly or indirectly, to the Issuer in connection with the Transactions for an aggregate amount not to exceed \$900,000,000, being \$225,000,000 funded at Closing subject to the terms and conditions of this Agreement and the remaining \$675,000,000 funded from time to time after Closing if and when required by the board of managers of the Issuer subject to the terms and conditions of the Second A&R LLC Agreement;

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**WHEREAS**, as a material inducement to each Party to enter into this Agreement and to consummate the Transactions: (i) the Group Companies, on the one hand, and APLD, and certain of its Subsidiaries, on the other hand, will, at or prior to the Closing, enter into a corporate and transition services agreement, in a form to be mutually agreed upon by the Parties in their respective sole discretion (as may be amended, amended and restated, supplemented and/or waived from time to time, the "Corporate Services Agreement"), pursuant to which, among other things, the parties thereto will receive and/or provide certain corporate services, assets and/or other resources, on a transitional and extended basis, all on the terms and conditions set forth therein; (ii) APLD will, at or prior to the Closing, execute and deliver to the Purchaser (or one of its Related Party Transferees) two (2) common stock purchase warrants, substantially in the form attached hereto as Exhibit A (the "Common Stock Purchase Warrants"), pursuant to which, among other things, the Purchaser (or its designated Affiliate) is entitled to subscribe for, and purchase from APLD, 4,458,069 shares of APLD's common stock, par value \$0.001 per share, per Common Stock Purchase Warrant, for a total of 8,916,138 shares of APLD's common stock, representing, in the aggregate, four percent (4%) of the total issued and outstanding shares of APLD's common stock calculated as of the end of the trading day immediately preceding the Effective Date and without giving effect to the exercise of such Common Stock Purchase Warrants, pursuant to the terms and conditions set forth therein; and (iii) APLD and the Purchaser will, concurrently with the execution and delivery of the Common Stock Purchase Warrants, enter into a registration rights agreement, substantially in the form attached hereto as Exhibit B (the "Registration Rights Agreement"), pursuant to which, among other things, APLD shall agree to prepare and file with the Commission a Registration Statement covering the resale of all of the shares of APLD's common stock which may be issued upon exercise of the Common Stock Purchase Warrants that are not then registered on an effective registration statement on the terms and subject to the conditions set forth therein;

**WHEREAS**, concurrently with the execution and delivery of this Agreement and as a material inducement to the willingness of the Issuer and APLD to enter into this Agreement, the Macquarie Equity Investors have executed and delivered to the Issuer and APLD that certain limited guaranty agreement in favor of the Issuer, of even date herewith (the "Limited Guarantee"), pursuant to which, subject to the terms and conditions therein, the Macquarie Equity Investor is guarantying those obligations of the Purchaser set forth in Section 6.3(a), on the terms and subject to the conditions set forth therein; and

**WHEREAS**, as a material inducement to each Party to enter into this Agreement and to consummate the Transactions, the Purchasers have agreed to use reasonable best efforts to obtain an R&W binder, which, if obtained, shall be delivered by the Purchasers to the Issuer as promptly as practicable following the date hereof (the "R&W Binder"), and the Parties desire to make certain representations, warranties, covenants and agreements, as more fully set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual benefits to be derived from this Agreement and the representations, warranties, covenants, agreements and conditions contained herein, the Parties hereby agree as follows:

1. Purchase and Sale.

1.1 Purchase and Issuance of Preferred Units and Common Units at the Closing.

(a) At the Closing, subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase from the Issuer, and the Issuer agrees to sell and issue to the Purchaser, an aggregate amount of Two Hundred Twenty-Five Thousand (225,000) Preferred Units, at a price per unit equal to the Preferred Price Per Unit, representing an aggregate consideration of Two Hundred Twenty-Five Million Dollars (\$225,000,000), free and clear of any Encumbrances other than restrictions on transfer under the Second A&R LLC Agreement and applicable state and federal securities Laws. The Preferred Units issued to the Purchaser pursuant to this Section 1.1(a) shall be referred to in this Agreement as the “Purchased Units.”

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(b) In connection with the issuance of the Purchased Units and delivery of the Purchaser Equity Commitment Letter by the Purchaser, and for no additional consideration, at the Closing, the Purchaser agrees to accept from the Issuer, and the Issuer agrees to issue to the Purchaser, such number of Common Units representing, in the aggregate, fifteen percent (15%) of the fully diluted common equity of the Issuer as of immediately following the Closing, free and clear of any Encumbrances other than restrictions on transfer under the Second A&R LLC Agreement and applicable state and federal securities Laws. The Common Units issued to the Purchaser pursuant to this Section 1.1(b) shall be referred to in this Agreement as the “Issued Units” and, collectively with the Purchased Units, shall be referred to in this Agreement as the “Subject Units.”

### 1.2 Time and Place of Closing; Payments.

(a) Unless this Agreement shall have been terminated in accordance with Section 6, the closing of the purchase and sale of the Purchased Units pursuant to this Agreement (the “Closing”) shall take place remotely via the exchange of documents and signatures by electronic mail and/or facsimile (i) on the fifteenth (15<sup>th</sup>) Business Day following the date upon which all of the conditions set forth in Section 1.3 have either been satisfied or duly waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at such time) or (ii) on such other date as the Issuer and the Purchaser may agree in writing (the date on which the Closing occurs being, the “Closing Date”). Unless the context indicates otherwise in accordance with the preceding sentence, all references herein to the “Closing Date” and the “Closing” shall mean the date on which and the time at which the Closing is effective.

(b) At the Closing, the Purchaser shall pay, or cause to be paid, to the Issuer by wire transfer of immediately available funds, in the amounts and to the account listed on Schedule 5 hereto, an aggregate amount equal to the number of Purchased Units being purchased by the Purchaser at the Closing *multiplied by* the Preferred Price Per Unit (the “Purchase Price”) and, against payment therefor, the Issuer shall issue such Purchased Units, together with such Purchased Units’ corresponding Common Units, to the Purchaser; provided, however, that notwithstanding anything to the contrary in this Agreement (including, for the avoidance of doubt, Section 1.3(c)(i)), the Purchaser may, in its sole discretion, elect to deduct from, and offset against, the Purchase Price an amount (the “Offset Amount”) up to the total amount of the Purchaser Transaction Expenses, subject to the Purchaser Expense Cap; provided, further, that, in the event the Purchaser makes such an election, the Purchaser Transaction Expenses shall be reduced by an amount equal to such Offset Amount.

### 1.3 Conditions Precedent to Closing; Deliveries.

(a) *Conditions to Each Party’s Obligations at the Closing.* The respective obligations of the Parties to consummate the transactions to be performed by the Parties at the Closing are subject to the satisfaction (or, if permitted by applicable Law, waiver by the Issuer and the Purchaser in accordance with this Agreement) of the following conditions:

(i) the Issuer, APLD and the Purchaser shall have negotiated and agreed on the Second A&R LLC Agreement, the Management Aggregator LLCA, the Pre-Closing Restructuring Plan and the Corporate Services Agreement (including all schedules and exhibits thereto, as applicable), in each case, in such form and on such terms and conditions satisfactory to the Issuer, APLD and the Purchaser in their respective sole discretion (which condition shall be deemed satisfied upon the execution by each of the Parties of a Satisfaction Notice relating to each of the Transaction Agreements referred to in this Section 1.3(a)(i)); and

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(ii) no judgment, writ, Order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any Order of or by any Governmental Authority, shall have been issued, and no

action or proceeding shall have been instituted by any Governmental Authority, enjoining or preventing the consummation of the Closing, and there shall be no pending or outstanding investigation by any Governmental Authority with respect to the consummation of the Transactions.

(b) *Conditions to the Purchaser's Obligations at the Closing.* The obligations of the Purchaser to consummate the transactions to be performed by the Purchaser at the Closing is subject to the satisfaction (or, if permitted by applicable Law, waiver by the Purchaser in accordance with this Agreement) of each of the following conditions:

(i) (x) the Issuer Fundamental Representations and the APLD Fundamental Representations shall be true and correct in all respects as of the Effective Date and on and as of the Closing, except to the extent expressly made as of an earlier date, in which case, as of such earlier date, and (y) all other representations and warranties contained in Sections 2 and 3 shall be true and correct in all respects as of the Effective Date and on and as of the Closing as if made on and as of such date (except to the extent any such representations and warranties expressly refer to an earlier date, in which case such representations and warranties shall be true and correct in all respects on and as of such earlier date), disregarding all qualifications contained therein relating to materiality or Material Adverse Effect (excluding in respect of Section 2.14(a)(viii)), except, in the case of this clause (y), those instances in which the failure of the representations and warranties to be true and correct has not, had, and is not reasonably expected to have, individually or in the aggregate, a Material Adverse Effect; provided, that, the representations and warranties contained in Sections 2 and 3 shall not be inaccurate as of the Closing solely as a result of the consummation of the Pre-Closing Restructuring Plan in accordance with the terms of this Agreement;

(ii) the Group Companies and APLD shall have, and APLD shall have caused APLD Holdings and the other members of the APLD Group to have, performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by the Group Companies, APLD, APLD Holdings or the other members of the APLD Group, as applicable, by the time of the Closing;

(iii) as of the Closing, there shall not have occurred and be continuing any Material Adverse Effect;

(iv) the Pre-Closing Restructuring shall have been completed in accordance with the Pre-Closing Restructuring Plan and the terms of Section 5.12, and documentation or other evidence of completion of the Pre-Closing Restructuring and the Pre-Closing Restructuring Transfers satisfactory to the Purchaser in its reasonable discretion shall have been delivered to the Purchaser;

(v) all approvals, Consents and waivers that are listed on Section 1.3(b)(v) of the Disclosure Schedule shall have been received, and executed counterparts thereof shall have been delivered to the Purchaser;

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(vi) no Specified Event of Default shall have occurred and be continuing;

(vii) as of the Closing, APLD Holdings' outstanding equity contributions to the Issuer (which, for the avoidance of doubt, includes all cash payments made, and all other property and/or assets contributed based on the cost of such property/assets, by any member of the APLD Group to the Issuer in respect of the ELN-A Project prior to the Closing that remain in the Issuer as of Closing), shall be equal to an amount no less than the Initial Funding Requirement;

(viii) as of immediately prior to the Closing, the authorized, issued and outstanding Equity Interests of the Issuer shall be represented by Common Units only, all of which shall be held and owned by its sole member APLD Holdings; and

(ix) the Issuer and APLD, as applicable, shall have delivered (or caused to be delivered) to the Purchaser:

(1) a true, correct and complete copy of the Second A&R LLC Agreement in the Agreed Form duly executed by each of APLD Holdings, the Management Aggregator and the Issuer, which Second A&R LLC Agreement shall remain in full force and effect as of the Closing (but for execution and delivery by the Purchaser);

(2) a true, correct and complete copy of the Management Aggregator LLCA in the Agreed Form duly executed by each of the parties thereto, which Management Aggregator LLCA shall remain in full force and effect as of the Closing;

(3) a true, correct and complete copy of the Corporate Services Agreement in the Agreed Form duly executed by each of the parties thereto, which Corporate Services Agreement shall remain in full force and effect as of the Closing;

(4) a true, correct and complete copy of the ELN-A Lease duly executed by each of the parties thereto, which ELN-A Lease shall be in form and substance satisfactory to the Purchaser in its sole discretion and remain in full force and effect as of the Closing;

(5) documentation evidencing the Debt Repayment (the “Debt Repayment Documentation”), including a customary payoff letter duly executed by the applicable member of the APLD Group and all lenders under each Project Debt, which such payoff letter shall (A) provide the total dollar amount required to be paid (including all principal, interest, penalties, if any, breakage costs, premium (including any base return requirements) or similar obligations) in order to fully satisfy and pay off all obligations under the Project Debt and all other obligations with respect to the Project Debt required to be paid as of the Closing to automatically terminate all documents relating to the Project Debt and to automatically release all Encumbrances and guarantees thereunder upon such payment (the “Debt Repayment Amount”), (B) state that upon receipt of the Debt Repayment Amount, the documents (including all security documents and guarantees) relating to the Project Debt and related instruments evidencing such Project Debt shall be terminated except for any customary indemnities, releases, or confidentiality obligations thereunder in favor of the lender if and to the extent they survive in accordance with their terms, and (C) state that all Encumbrances and all guarantees in connection therewith relating to the assets of the Issuer or any Subsidiary of the Issuer shall be released upon receipt of the Debt Repayment Amount on the Closing Date (such payoff letters, the “Debt Payoff Letters”);

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(6) an IRS Form W-9 properly completed by each of the Issuer and APLD Holdings (or if either the Issuer or APLD Holdings is disregarded for U.S. federal income tax purposes, its regarded owner for U.S. federal income tax purposes);

(7) a certificate as to the satisfaction of the matters set forth in Sections 1.3(b)(i), (ii) and (iii) with respect to APLD, executed by an authorized officer of APLD in such officer’s capacity as such, and not in their individual capacity (the “APLD Closing Certificate”);

(8) a certificate as to the satisfaction of the matters set forth in Sections 1.3(b)(i), (ii) and (iii) with respect to the Issuer, executed by an authorized officer of the Issuer in such officer’s capacity as such, and not in their individual capacity (the “Issuer Closing Certificate”);

(9) a true, correct and complete copy of each of the Common Stock Purchase Warrants, executed by APLD; and

(10) a true, correct and complete copy of the Registration Rights Agreement, duly executed by APLD.

(c) *Conditions to the Issuer’s Obligations at the Closing.* The obligations of the Issuer to consummate the transactions to be performed by the Issuer at the Closing is subject to the satisfaction (or, if permitted by applicable Law, waiver by the Issuer in accordance with this Agreement) of each of the following conditions:

(i) the simultaneous delivery by the Purchaser to the Issuer of the Purchase Price by wire transfer of immediately available funds to the account designated in Schedule 5 hereto (subject to the terms of Section 1.2(b)); and

(ii) the Purchaser shall have delivered to the Issuer:

(1) a true, correct and complete copy of the Second A&R LLC Agreement in the Agreed Form duly executed by the Purchaser;

(2) a true, correct and complete copy of the Registration Rights Agreement, duly executed by the Purchaser (or its applicable Affiliate);

(3) if obtained by the Purchaser in accordance with Section 5.11, a true, accurate and complete copy of the R&W Policy; and

(4) an IRS Form W-9, properly completed by the Purchaser (or if the Purchaser is disregarded for U.S. federal income tax purposes, its regarded owner for U.S. federal income tax purposes).

(d) *Use of Proceeds*. From the proceeds from sale of the Subject Units, the Issuer shall:

(i) *first*, pay (1) the Debt Repayment, (2) the Transaction Expenses in accordance with this Agreement, (3) the APLD Closing Distribution in accordance with Section 5.14 and (4) the Transfer Taxes (if any) in accordance with Section 5.10, in each case, at the Closing; and

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(ii) *then*, fund the construction costs of the ELN-A Project and any other capital, general, administrative or operating expenses of the Issuer and its Subsidiaries, in each case, pursuant to the Second A&R LLC Agreement.

For the avoidance of doubt, the Issuer shall not use the proceeds from the sale of the Subject Units for any purpose other than as set forth in this Section 1.3(d).

1.4 Defined Terms Used in this Agreement. The following terms used in this Agreement shall be construed to have the meanings set forth or referenced below:

(a) “Affiliate” means with respect to any specified Person, (i) with respect to any natural Person, any trust, family limited partnership or similar entity created by such natural Person solely for the benefit of such natural Person for estate planning purposes, and (ii) with respect to any other Person, any Person which directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such other Person; provided, that, for the purposes of this Agreement, the Purchaser and its Subsidiaries shall not be considered an “Affiliate” of any member of the Macquarie Group or any Investment Fund or Fund Vehicle affiliated with any member of the Macquarie Group or any portfolio company (as that term is customarily understood among institutional private equity investors) of any such Person, nor shall any member of the Macquarie Group or any Investment Fund or Fund Vehicle affiliated with any member of the Macquarie Group or any portfolio company of any such Person be considered an “Affiliate” of the Purchaser or its Subsidiaries, in each case other than with respect to the definition of “Non-Party Affiliate” and for the purposes of Sections 5.6, 5.7, 6.3(c), 7.1 and 7.2.

(b) “Agreed Form” has the meaning set forth in Section 5.17(b).

(c) “Agreement” has the meaning set forth in the introductory paragraph.

(d) “Anti-Corruption Laws” means Laws, regulations, directives (including EU directives), conventions, treaties or guidelines related to public or commercial bribery, corruption, kickbacks, racketeering, fraud, or other improper payments including without limitation the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act of 2010, and Laws implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997.

(e) “Anti-Money Laundering Laws” means Laws related to money laundering, anti-terrorism, proceeds of crime, or financial record keeping, including without limitation the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act).

(f) “APLD” has the meaning set forth in the recitals.

(g) “APLD Closing Certificate” has the meaning set forth in Section 1.3(b)(ix)(7).

(h) “APLD Closing Distribution” means a cash distribution which shall be made at, or contemporaneous with, the Closing, by the Issuer to APLD Holdings in an amount (if any) equal to the ELN Site Capitalization *minus* the Initial Funding Requirement and *minus* the Debt Repayment, which shall be paid, to the extent available, from any combination of proceeds pursuant to Section 1.3(d), Construction Financing proceeds or cash on hand; provided, however, that if the amount of cash on hand at Closing

is insufficient to make the APLD Closing Distribution at Closing, the Issuer shall make the APLD Closing Distribution as soon as reasonably practicable thereafter.

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(i) “APLD Fundamental Representations” means the representations and warranties set forth in Section 3.1 (Organization, Qualification, Power and Authority), Section 3.2 (Authorization; Binding Effect), Section 3.5 (No Finder’s Fees) and Section 3.6 (Outstanding Shares).

(j) “APLD Group” means APLD and each of its direct or indirect Subsidiaries (other than the Group Companies).

(k) “APLD Holdings” has the meaning set forth in the recitals.

(l) “Balance Sheet Date” has the meaning set forth in Section 2.24(a).

(m) “Business” means the business of (i) owning, developing, and operating the HPC Segment or the HPC Assets, (ii) leasing or acquiring real property for purposes of designing, developing and operating thereon data centers to provide digital infrastructure solutions for high performance computing applications, and (iii) conducting activities related to or incidental to the foregoing.

(n) “Business Day” means a day, other than a Saturday or Sunday, on which commercial banks in New York City are open for the general transaction of business.

(o) “Chosen Courts” has the meaning set forth in Section 7.4.

(p) “Claim Notice” has the meaning set forth in Section 7.1(e).

(q) “Closing” has the meaning set forth in Section 1.2(a).

(r) “Closing Date” has the meaning set forth in Section 1.2(a).

(s) “Co-Investment Vehicles” means a customary investment vehicle (i) that is controlled by an Investment Fund, Fund Manager or Affiliates of the foregoing, and (ii) in which any outstanding equity securities not held by such Investment Fund, Fund Manager or any of their respective Affiliates constitute limited partner or other passive interests.

(t) “Code” means the United States Internal Revenue Code of 1986, as amended.

(u) “Collective Bargaining Agreement” means any material collective bargaining agreement, binding memorandum of understanding or similar contractual obligation between any of the Group Companies and any labor union or similar authorized employee representative representing employees of a Group Company.

(v) “Common Stock Purchase Warrant” has the meaning set forth in the recitals.

(w) “Common Unit” means a Unit representing a common limited liability company interest in the Issuer, with the rights and obligations to be set forth in the Second A&R LLC Agreement.

(x) “Competing Transaction” means any (i) third party financing (whether equity, debt or otherwise) transaction where the primary use of proceeds is for funding the HPC Segment (or any portion thereof) or (ii) a sale, transfer, Encumbrance, sale leaseback, disposal or other similar transaction, in each case of this clause (ii), of the Equity Interests or assets of the Issuer, the HPC Segment or the ELN Campus involving a third party; provided, however, that a Competing Transaction shall not include (a) any public offering of debt or equity by APLD, (b) any public or private offering of convertible notes by APLD, (c) any offer, issuance or sale of APLD Series E-1 preferred stock, or (d) site-level project finance structured as debt, in each case of (a) through (d), solely to the extent not intended to replace, impede, delay, limit or prevent the transactions contemplated by this Agreement.

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(y) “Confidential Information” has the meaning set forth in Section 5.6(b).

(z) “Confidentiality Agreement” means that certain Mutual Nondisclosure Agreement, effective as of July 23, 2024, by and between MIP VI Holdings II, LLC and APLD.

(aa) “Consent” means the consent, approval, authorization, novation, waiver, permit, grant, concession, agreement, license, exemption or Order of, registration, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

(bb) “Construction Financing” means the proposed senior secured term loan facility in respect of the ELN-A Project from an institutional lender, subject to the terms and conditions set forth on Schedule 7 hereto.

(cc) “Contracts” has the meaning set forth in Section 2.9(a).

(dd) “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” shall have meanings correlative thereto.

(ee) “Corporate Services Agreement” has the meaning set forth in the recitals.

(ff) “Data Center Lease” means any master service agreement, colocation agreement, lease, sublease or similar Contract (including service or similar orders thereunder) in respect of the HPC Segment, in each case, that has been executed as of the Effective Date or the Closing Date (including the ELN-A Lease and any other Specified Lease), to which any of the Group Companies or, if related to the Business, any member of the APLD Group is a party and by which any of the Group Companies or member of the APLD Group, as applicable, grants or proposes to grant a Person a leasehold estate, leasehold interest, subleasehold estate, sublease interest, license or the right to use or occupy space in, or to receive power or ancillary services related to, any high performance computing data center.

(gg) “Data Room” has the meaning set forth in Section 7.8.

(hh) “Debt Payoff Letters” has the meaning set forth in Section 1.3(b)(ix)(5).

(ii) “Debt Repayment” means the repayment in full of all obligations outstanding under any Project Debt.

(jj) “Debt Repayment Amount” has the meaning set forth in Section 1.3(b)(ix)(5).

(kk) “Debt Repayment Documentation” has the meaning set forth in Section 1.3(b)(ix)(5).

(ll) “Deductible Amount” means an amount equal to Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000).

(mm) “Disclosure Schedule” means that certain disclosure schedule delivered pursuant to the terms of this Agreement and attached hereto as Schedule 6.

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(nn) “Disqualification Event” has the meaning set forth in Section 2.5(b).

(oo) “Effective Date” has the meaning set forth in the introductory paragraph.

(pp) “ELN-A Lease” means a lease of at least one hundred (100) megawatts of data center capacity for Building A to be executed by and between ELN-A and a Specified Customer (or such other tenant as shall be acceptable to the Purchaser in its reasonable discretion).

(qq) “ELN-A” means ELN-02 A LLC, a Delaware limited liability company.

(rr) “ELN-A Project” means the development and operation of the ELN Building A.

(ss) “ELN-B” means ELN-02 B LLC, a Delaware limited liability company.



(tt) “ELN-C” means ELN-02 C LLC, a Delaware limited liability company.

(uu) “ELN Building A” means that certain data center having an aggregate amount of electrical power available for use of one hundred (100) megawatts located at the ELN Campus on the parcel described as Outlot 4-4, being part of the Outlot 4-2 located within the SE1/4 of Sec. 4, Twp. 129N., Rge. 63W., of th<sup>e</sup> 5th P.M., Dickey County, North Dakota, which is commonly referred to by the Issuer as “Building A.”

(vv) “ELN Building B” means the data center commonly referred to by the Issuer as “Building B” at the ELN Campus which, as of the Effective Date, is in the initial stages of development.

(ww) “ELN Building C” means the data center commonly referred to by the Issuer as “Building C” at the ELN Campus which, as of the Effective Date, is in the initial stages of development.

(xx) “ELN Campus” means that certain real property located in Ellendale, North Dakota on which and all buildings and other improvements thereon, in each case, owned and/or leased by the Issuer for use in the HPC Segment.

(yy) “ELN Site Capitalization” means (i) \$712,451,571.50, plus (ii) additional equity contributions made to the Issuer after December 31, 2024, but prior to the Closing.

(zz) “Employee Benefit Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), whether or not subject to ERISA, and any other employment, retirement, pension, profit sharing, deferred compensation, equity or equity-based, bonus, incentive, severance, change-in-control, welfare, fringe benefit and each other similar employee benefit plan, policy, program, agreement, contract, or arrangement, whether written or oral, qualified or non-qualified, or funded or unfunded.

(aaa) “Encumbrance” means any lien, pledge, lease or sublease (other than Data Center Leases), license, hypothecation, charge, mortgage, security interest, encumbrance, deed of trust, option, right of first refusal or similar encumbrance.

(bbb) “Enforceability Exceptions” has the meaning set forth in Section 2.4.

(ccc) “Environmental Laws” means all Laws concerning pollution, public or worker health or safety, or protection of the environment.

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(ddd) “Equity Interests” means any (i) shares or units of capital stock or voting securities, (ii) membership or partnership interests or units, (iii) other interest, appreciation or participation (including phantom shares, units or interests) that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity, (iv) subscriptions, calls, warrants, options, or commitments of any kind or character relating to, or entitling any Person or entity to purchase or otherwise acquire any of the interests contemplated by clauses (i) through (iii) of this sentence, or any other equity securities, or (v) securities convertible into or exercisable or exchangeable for any of the interests in any of the equity interests contemplated by clauses (i) through (iv) of this sentence or any other equity securities.

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

(fff) “Existing LLC Agreement” has the meaning set forth in the recitals.

(ggg) “Financial Reports” has the meaning set forth in Section 2.24(a).

(hhh) “Fraud” means, with respect to any Person, actual common law fraud on the part of such Person making the representations and warranties set forth in Sections 3, 4 or 5 of this Agreement, or any certificates delivered hereunder, as applicable, as interpreted by Delaware courts applying Delaware law. “Fraud” shall not include any fraud claim based on constructive knowledge, recklessness, negligent misrepresentation or a similar theory, and a Person who has not made the representation constituting the fraudulent misrepresentation shall not have liability for Fraud in respect of such fraudulent misrepresentation.

(iii) “Fund Advisor” means, with respect to any Investment Fund that does not have a Fund Manager, the primary or principal entity that provides investment advice to such Investment Fund.

(jjj) “Fund Manager” means, with respect to any Investment Fund, any general partner, trustee, responsible entity, manager, or other entity performing a similar function with respect to such Investment Fund.

(kkk) “Fund Vehicle” means (i) an Investment Fund that makes investments in multiple portfolio companies, together with any alternative investment vehicles, (ii) feeder funds, parallel funds, intermediate entities, blocker corporations or other entities, in each case, that was formed for the purposes of investment with any fund described in clause (i) and was not formed primarily to invest in the Issuer or any of its Subsidiaries and (iii) any investment vehicle, directly or indirectly, controlled by any fund described in clause (i) or (ii).

(lll) “GAAP” means United States generally accepted accounting principles.

(mmm) “Governing Documents” means, when used with respect to an entity, the documents governing the formation, governance or organization of such entity, including, without limitation, (i) in the instance of a corporation, the articles or certificate of incorporation and bylaws of such corporation or other documents customarily considered to be the equivalent; (ii) in the instance of a limited partnership, the certificate of formation and the limited partnership agreement or other documents customarily considered to be equivalent documents; (iii) in the instance of a limited liability company, the certificate of formation and limited liability company agreement or other documents customarily considered to be equivalent documents; and (iv) in the instance of an unlimited liability company, the certificate of incorporation, notice of articles and articles of such corporation.

(nnn) “Government Official” has the meaning set forth in Section 2.13.

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(ooo) “Governmental Authority” means any federal, state, local, or other government, or any court, governmental division or department, administrative agency or commission or other governmental or quasi-governmental authority or instrumentality of any nature, domestic or foreign (including an arbitral tribunal).

(ppp) “Group Companies” means the Issuer and its direct or indirect Subsidiaries.

(qqq) “HPC Assets” means all material tangible and intangible assets, properties, Contracts and rights of the APLD Group, the Group Companies, ELN-A, ELN-B or ELN-C that are required or necessary for, or primarily related to, or used in or held for use in connection with, useful in, or otherwise material to the Business, including (i) the HPC Segment and related assets, properties and rights, (ii) all of the APLD Group’s, Group Companies’, ELN-A’s, ELN-B’s and ELN-C’s data centers and datacenter land projects for the HPC Segment (including the ELN Building A, ELN Building B, ELN Building C and the Substation), (iii) all Data Center Leases and (iv) the Specified HPC Assets; provided, however, that “HPC Assets” shall be deemed to exclude any assets, properties, Contracts and rights exclusively related to the Specified Properties.

(rrr) “HPC Segment” means APLD’s high performance computing segment for data centers (other than for use in crypto mining, APLD’s cloud services business, the operation of the data center in Jamestown, North Dakota as presently conducted or hosting APLD’s owned or leased computing equipment).

(sss) “Indemnification Claim” has the meaning set forth in Section 7.1(e).

(ttt) “Indemnity Dispute Period” has the meaning set forth in Section 7.1(f).

(uuu) “Initial Funding Requirement” means an amount equal to \$1,000,000 per MW under the Data Center Leases (including the ELN-A Lease) signed at or prior to Closing in regards to the ELN Campus.

(vvv) “Insurance Policies” has the meaning set forth in Section 2.17.

(www) “Intellectual Property” means all worldwide intellectual property rights, including (i) patents and patent applications, (ii) trademarks, service marks, trade names, trade dress, logos, domain names and other source identifiers, together with the goodwill associated therewith, (iii) copyrights and works of authorship, including copyrights in Software, (iv) confidential and proprietary information, including trade secrets, inventions and know-how, (v) Software and (vi) registrations and applications for registration of the foregoing.

(xxx) “Interim Period” has the meaning set forth in Section 5.1.

(yyy) “Investment Fund” means (i) a private equity fund, hedge fund, family office or other investment fund that makes investments in debt or equity securities and/or portfolio companies, (ii) an alternative investment vehicle for a private equity fund, hedge fund, family office or other investment fund making investments of the type described in the foregoing clause (i), (iii) any Person (other than a portfolio company), directly or indirectly, controlled by, or under common control with, any private equity fund, hedge fund, family office or other investment fund (or group of affiliated private equity funds, hedge funds, family offices or other investment funds) described in the foregoing clauses (i) and (ii), and/or (iv) any general partner or managing member who is an Affiliate of any of the foregoing.

(zzz) “IRS” means the United States Internal Revenue Service.

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(aaaa) “Issued Units” has the meaning set forth in the recitals.

(bbbb) “Issuer” has the meaning set forth in the introductory paragraph.

(cccc) “Issuer Closing Certificate” has the meaning set forth in Section 1.3(b)(ix)(8).

(dddd) “Issuer Fundamental Representations” means the representations and warranties set forth in Section 2.1 (Organization, Qualification, Power and Authority), Section 2.2(a) (Capitalization; Subsidiaries), Section 2.4 (Authorization; Binding Effect), Section 2.5(a) (Valid Issuance of Subject Units), Section 2.16 (Taxes) and Section 2.20 (No Finder’s Fees).

(eeee) “Issuer Intellectual Property” means all Intellectual Property owned, purported to be owned or licensed by the Issuer and its Subsidiaries for the conduct of the Business, as currently conducted.

(ffff) “Issuer Transaction Expenses” means the following out-of-pocket costs, fees and expenses to the extent incurred by any Group Company on or before the Closing Date in connection with the Transactions, which are unpaid as of the Closing, including: (i) the fees and expenses of Lowenstein Sandler LLP; and (ii) the fees and expenses of KPMG LLP; provided, that Issuer Transaction Expenses shall not exceed \$3,000,000. Any costs, fees and expenses incurred by any member of the APLD Group (other than a Group Company) shall not be deemed Issuer Transaction Expenses, and the Parties hereby agree that the Group Companies shall have no liability therefor. Issuer Transaction Expenses shall not include (x) any Pre-Closing Restructuring Expenses or (y) any fees, commissions or expenses payable to any broker, finder, agent or similar advisor with respect to Transactions.

(gggg) “IT Assets” means all hardware, Software, systems, networks, applications, websites, and other information technology assets or equipment.

(hhhh) “Knowledge” with respect to APLD or the Issuer, including the phrase “to the Knowledge of APLD” and “to the Knowledge of the Issuer,” means the actual knowledge of Wes Cummins, David Rench, Saidal Mohmand, Mark Chavez, Syed A. Raza, Nick Phillips, Zack Stevens, LaTascha Durden and Janelle Combs none of whom will have any personal liability or obligations regarding such knowledge.

(iiii) “Law” means any statute, law (including common law), ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, determination or other requirement or rule of law of any Governmental Authority.

(jjjj) “Leased Real Property” means the real property leased or subleased to any Group Company and used in the Business, as presently conducted.

(kkkk) “Leases” means all leases, licenses and subleases, including all amendments, extensions, renewals, modifications and guaranties with respect thereto, pursuant to which any Group Company holds any Leased Real Property.

(llll) “Legal Proceeding” means any judicial, administrative or arbitral actions, litigation, investigations, suits, demands, action, causes of action, claims, audits, arbitrations, assessments or proceedings of any nature (in each case whether civil, criminal, administrative or investigative, whether formal or informal, whether public or private, whether in Law, in equity or otherwise), including appeals, by or before or involving a Governmental Authority.

(mmmm) "Look-Back Date" means January 1, 2023.

(nnnn) "Limited Guarantee" has the meaning set forth in the recitals.

(oooo) "Losses" means any claims, injuries, losses, damages, liabilities (including any liabilities for Taxes), settlements, judgments, awards, penalties, fines, costs or expenses (including reasonable legal, expert and consultant fees and expenses).

(pppp) "Macquarie Equity Investors" means Macquarie Infrastructure Partners VI SCSp and Macquarie Infrastructure Partners VI, L.P.

(qqqq) "Macquarie Group" means (i) Macquarie Group Limited ("MGL"), any holding company of MGL (including any holding company interposed for the purposes of an internal reorganization) (an "MGL Holding Company"), any subsidiary undertaking of MGL or of an MGL Holding Company; (ii) any Fund Vehicle or other legal entity which is advised by or the assets of which are managed by any entity referred to in the immediately preceding clause (i), including Macquarie Infrastructure Partners VI SCSp, Macquarie Infrastructure Partners VI, L.P., and their respective general partners; and (iii) any subsidiary undertaking of a Fund Vehicle or legal entity referred to in the immediately preceding clause (ii); provided, however, that the term "advised" means being in receipt of advice in relation to the management of investments of that legal entity which (other than in relation to actually making decisions to implement such advice) is substantially the same as the services which would be provided by a manager of the relevant legal entity.

(rrrr) "Management Aggregator" means Black Marlin Management Aggregator LLC, a Delaware limited liability company.

(ssss) "Material Adverse Effect" means any event, change, circumstance, effect, development or state of facts (each, an "Effect") that, individually or in the aggregate with other Effects, (x) is or would reasonably be expected to be materially adverse to the business, condition (financial or otherwise), operations, assets, liabilities or results of operations of the Group Companies or the Business, taken as a whole or (y) would reasonably be expected to materially impair or delay the ability of the Issuer or APLD to perform their respective obligations under this Agreement and the other documents contemplated hereby and to consummate the transactions contemplated hereby and thereby; provided, however, that, in the case of clause (x) only, a Material Adverse Effect shall not include the effect of any Effect to the extent resulting from, relating to, arising out of or attributable to any of the following: (i) the consummation of the Transaction (provided, that this clause (i) shall not apply to any representations or warranty expressly addressing the consequences resulting from the execution or announcement of the Transactions (or any condition to Closing related thereto)); (ii) matters generally applicable to the industry in which the Issuer and its Subsidiaries operate; (iii) any changes after the Effective Date in (a) the United States or global economy or capital or financial markets generally, (b) interest rates or currency exchange rates or (c) trade agreements, tariffs, anti-dumping actions or other trade actions; (iv) any changes after the Effective Date in Laws, including enacted legislation or regulatory changes or changes after the Effective Date in GAAP or regulatory accounting principles applicable to the Issuer and its Subsidiaries; (v) any natural disaster, national or international political or social actions or conditions, the engagement of any country or foreign organization in hostilities or war (or the escalation thereof), whether or not pursuant to the declaration of a national emergency or war, act of terrorism, epidemic, pandemic, virus or other disease outbreak, state of emergency, public health crisis or other public health event, or any material worsening or escalation of any of the foregoing; (vi) failure in and of itself (as distinguished from any change or event giving rise or contributing to such failure, provided, that any change or event giving rise or contributing to such failure may be taken into account if not otherwise excluded under the other subclauses of this definition) by the any Group Company to meet any projected financial or non-financial performance; (vii) any actions taken, or failures to take any action, in each case, to which the Purchaser has consented in writing; or (viii) any action taken by any Group Company that is expressly required or contemplated of this Agreement, except, in the case of the foregoing clauses (ii), (iii), (iv) and (v), to the extent the Group Companies, taken as a whole, are disproportionately affected thereby as compared to the other businesses or participants engaged in the same industry and geographies in which the Group Companies operate.

(tttt) "Material Contract" has the meaning set forth in Section 2.9(a).

(uuuu) "Material Permits" has the meaning set forth in Section 2.18.

(vvvv) “Material Suppliers” has the meaning set forth in Section 2.21.

(www) “Maximum Fundamental Indemnification Amount” means Two-Hundred Twenty-Five Million Dollars (\$225,000,000).

(xxxx) “Maximum General Indemnification Amount” means Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000).

(yyyy) “Management Aggregator LLCA” means the Amended and Restated Limited Liability Company Agreement of Management Aggregator, dated as of the Closing Date.

(zzzz) “Non-Party Affiliates” has the meaning set forth in Section 7.2.

(aaaa) “Offset Amount” has the meaning set forth in Section 1.2(b).

(bbbb) “Order” means any judgment, order, ruling, decision, verdict, subpoena, mandate, precept, command, consent, administrative order, writ, directive, stipulation, injunction, award, decree or similar legal restraint of, or binding settlement having the same effect with, any Governmental Authority, in each case, whether permanent, preliminary or temporary.

(cccc) “Ordinary Course” or “Ordinary Course of Business” means the conduct of the Business in accordance with the Group Companies’ and, if related to the Business, APLD’s normal customs, practices and procedures as presently conducted, consistent with past practice.

(dddd) “Outside Date” has the meaning set forth in Section 6.1(f).

(eeee) “Owned Properties” has the meaning set forth in Section 2.12(a).

(ffff) “Party” has the meaning set forth in the introductory paragraph.

(gggg) “Permitted Affiliate Transactions” has the meaning set forth in Section 2.10.

(hhhh) “Permitted Encumbrances” means (i) those Encumbrances set forth on Schedule 1 attached hereto; (ii) mechanics’, carriers’, workmen’s, repairmen’s or other similar Encumbrances arising or incurred in the Ordinary Course of Business with respect to any amounts not yet delinquent or which are being contested in good faith by appropriate proceedings and for which reserves have been established in accordance with GAAP; (iii) Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business with respect to any amounts not yet delinquent or which are being contested in good faith by appropriate proceedings and for which reserves have been established in accordance with GAAP; (iv) statutory liens for Taxes that are not due and payable or that are being contested in good faith by appropriate proceedings, and, in each case, for which adequate reserves have been established in accordance with GAAP; (v) easements, covenants, rights-of-way and other similar restrictions of record that do not materially interfere with the present uses or occupancy of real property owned or leased by Group Company; (vi) any conditions that may be shown by a current, accurate survey or physical inspection of any parcel of real property owned or leased by any Group Company that do not materially interfere with the present uses or occupancy of such assets; and (vii) (1) zoning, building and other similar restrictions that are not violated by the current use or operation of the Owned Properties or Leased Real Property, and (2) Encumbrances created under any of the Leases, or other real property lease or sublease, in favor of the landlord or sublandlord thereunder for amounts not yet due.

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(iiii) “Permitted Transferees” means, with respect to the Purchaser or any of its Permitted Transferees, any of the Purchaser’s or Permitted Transferee’s Related Party Transferees or Co-Investment Vehicles.

(jjjj) “Person” means any individual, corporation, partnership, limited liability company, trust, association or any other entity.

(kkkk) “Personal Data” has the same meaning as the term “personal data”, “personal information”, “personally identifiable information”, or “protected health information” and similar terms under applicable privacy Laws.

(lllll) “Physical Network” means fibers and related infrastructure (including poles, ducts, and highway shoulders) owned or leased (whether pursuant to a lease, indefeasible right of use or otherwise) by a Group Company or its Affiliates and used in connection with the Business.

(mmmmm) “Pre-Closing Restructuring” has the meaning set forth in the recitals.

(nnnnn) “Pre-Closing Restructuring Documents” has the meaning set forth in Section 5.12(a).

(ooooo) “Pre-Closing Restructuring Expenses” has the meaning set forth in Section 5.12(d).

(ppppp) “Pre-Closing Restructuring Plan” has the meaning set forth in the recitals.

(qqqqq) “Pre-Closing Restructuring Transfers” has the meaning set forth in Section 5.12(b).

(rrrrr) “Pre-Operational Data Centers” means the data centers (or portions thereof) owned, leased or managed by the Group Companies that are under construction or development (including the buildout of any shell space).

(sssss) “Preferred Price Per Unit” means a price per Preferred Unit of One Thousand Dollars and Zero Cents (\$1,000.00).

(ttttt) “Preferred Unit” means a Unit representing a preferred limited liability company interest in the Issuer with the rights and obligations to be set forth in the Second A&R LLC Agreement.

(uuuuu) “Privacy Requirements” means applicable Laws, binding industry or self-regulatory standards and public or posted policies relating to privacy, data protection, and the processing (as defined in applicable Laws) of Personal Data.

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(vvvvv) “Project Debt” means all indebtedness of (i) any member of the APLD Group secured by any of the HPC Assets or the Business (or for which any of the HPC Assets or the Business serves as collateral) or guaranteed by any Group Company or (ii) any Group Company, but excluding any Construction Financing, in each case of (i) and (ii), together with any refinancing thereof.

(wwwww) “Purchase Price” has the meaning set forth in Section 1.2(b).

(xxxxx) “Purchased Units” has the meaning set forth in Section 1.1(a).

(yyyyy) “Purchaser” has the meaning set forth in the introductory paragraph.

(zzzzz) “Purchaser Equity Commitment Letter” has the meaning set forth in the recitals.

(aaaaa) “Purchaser Expense Cap” has the meaning set forth in Section 7.13.

(bbbbb) “Purchaser Fundamental Representations” means the representations and warranties set forth in Section 4.1 (Authorization) and Section 4.9 (No Finder’s Fees).

(ccccc) “Purchaser Indemnified Parties” has the meaning set forth in Section 7.1(a)(i).

(ddddd) “Purchaser Managed Vehicles” means any (i) Fund Vehicle, co-investment scheme or vehicle, managed account or collective investment vehicle managed, controlled or advised by the Purchaser or any affiliate thereof, (ii) any affiliate of the Purchaser formed to invest in one (1) or more Fund Vehicles or co-investment schemes or vehicles managed, controlled or advised by the Purchaser or any affiliate thereof or (iii) any entity Controlled or directly or indirectly wholly owned by one (1) or more funds or vehicles specified in the foregoing clauses (i) and (ii), in each case formed primarily to invest third party capital.

(eeeee) “Purchaser Transaction Expenses” has the meaning set forth in Section 7.13.

(fffff) “R&W Binder” has the meaning set forth in the recitals.

(gggggg) “R&W Policy” has the meaning set forth in Section 5.11.

(hhhhhh) “Registration Rights Agreement” has the meaning set forth in the recitals.

(iiiiii) “Regulatory Remedy” means (i) proposing, negotiating, committing to, agreeing to and effecting, by consent, decree, hold separate orders or otherwise, the sale, lease, divestiture, disposition, or license (or holdings separate pending such disposition) of any assets, operations, rights, product lines, licenses, properties, products, rights, services or businesses, (ii) otherwise taking or committing or agreeing to restrictions or actions that limit the freedom of action or operations with respect to, any assets, operations, rights, product lines, licenses, properties, products, rights, services or businesses, (iii) otherwise agreeing to any other structural or conduct remedy, or (iv) agreeing to enter into, modify or terminate existing contractual relationships, contractual rights or contractual obligations, and promptly effecting the sale, lease, license, divestiture, disposal and holding separate of, assets, operations, rights, product lines, licenses, properties, products, rights, services or businesses.

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(jjjjjj) “Related Party Transferee” means (i) with respect to any Person that is an Investment Fund or is directly or indirectly owned by an Investment Fund, (1) the Fund Manager or Fund Advisor of such Investment Fund, (2) the Affiliates of such Fund Manager or Fund Advisor, (3) any Investment Fund managed by such Fund Manager or its Affiliates and any Investment Fund advised by such Fund Advisor or its Affiliates (including, in respect of the Purchaser, any Purchaser Managed Vehicle), or (4) any direct or indirect Subsidiary or portfolio company (as that term is customarily understood among institutional private equity investors) of such Fund Manager, Fund Advisor, their Affiliates or other Investment Fund and (ii) with respect to any Person that is not and is not directly or indirectly owned by an Investment Fund, its Affiliates; provided that, in each case, such Related Party Transferee is a “United States person” as defined in Section 7701(a)(30) of the Code unless otherwise reasonably agreed to by APLD.

(kkkkkk) “Representatives” means, with respect to any Party or other Person, the officers, directors, managers, members, trustees, employees, agents, counsel, accountants, financial advisors and other representatives of such Party or other Person.

(llllll) “Retained Business Assets” means any asset, right, Contract and claim of the Group Companies other than the Specified HPC Assets.

(mmmmmm) “Retained Business Liability” means any liability or obligation, without duplication, whether known or unknown and whether arising before, at or after the Closing, arising from or related to the businesses of the Group Companies, including, any such unpaid liability or unsatisfied obligation with respect to any Specified Employee as of the date the transfer of such Specified Employee’s employment in connection with the Pre-Closing Restructuring or otherwise under Section 5.12(e) hereof and in respect of such transfer of such Specified Employee’s employment, other than, for the avoidance of doubt, to the extent related to the Specified HPC Assets.

(nnnnnn) “Sanctioned Country” means, at any time, any country (or government of any country), region, or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, the Crimea, Kherson, so-called Donetsk People’s Republic, so-called Luhansk People’s Republic, and Zaporizhzhia regions of Ukraine, Cuba, Iran, North Korea, Syria and Venezuela).

(oooooo) “Sanctioned Person” means any Person that is (i) listed on any Sanctions-related list of designated or blocked persons issued by the United States government (including, but not limited to, the U.S. Department of the Treasury, the U.S. Department of State, and the U.S. Department of Commerce), the United Nations Security Council, the European Union, any EU Member State, HM’s Treasury of the United Kingdom, or any other Sanctions authority with jurisdiction over the Issuer, (ii) located in, ordinarily resident in, organized under the Laws of or ordinarily resident in, or the government of, a Sanctioned Country, (iii) 50% or greater owned or controlled by, or acting on behalf of, any such Person or Persons described in the foregoing clauses (i) and (ii), or (iv) otherwise a subject or target of any Sanctions.

(pppppp) “Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the United States government (including, but not limited to, the U.S. Department of the Treasury, the U.S. Department of State, and the U.S. Department of Commerce), the United Nations Security Council, the European Union, any EU Member State, HM’s Treasury of the United Kingdom or any other Sanctions authority with jurisdiction over the Issuer.

(qqqqqq) “Satisfaction Notice” has the meaning set forth in Section 5.17(b).

(rrrrrr) “Second A&R LLC Agreement” has the meaning set forth in the recitals.

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(ssssss) “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(tttttt) “Settlement” has the meaning set forth in Section 7.1(f).

(uuuuuu) “Software” means all (i) computer programs, whether in source code or object code, and (ii) documentation, including user manuals and other training documentation, related thereto.

(vvvvvv) “Specified Customer” has the meaning set forth on Schedule 2 hereto.

(wwwwww) “Specified Employee Plan” has the meaning set forth in Section 2.15(a).

(xxxxxx) “Specified Employees” has the meaning set forth in Section 2.15(b).

(yyyyyy) “Specified Event of Default” means an event of default under any Data Center Lease or any documentation applicable to the Project Debt (except to the extent such Project Debt is repaid in full at Closing).

(zzzzzz) “Specified HPC Assets” means (i) all HPC Assets related to, or that are required or necessary for, the ELN-A Project (including, for the avoidance of doubt, the Substation) and (ii) any other assets, properties or rights of APLD and its Subsidiaries (including the Group Companies) mutually identified and agreed to by the Parties in writing prior to the Closing to be transferred to, or retained by, the Group Companies at Closing.

(aaaaaaa) “Specified Lease” means any Data Center Lease with a Specified Customer (including, for the avoidance of doubt, the ELN-A Lease).

(bbbbbbb) “Specified Properties” means the properties described on Schedule 4 hereto.

(ccccccc) “Subject Units” has the meaning set forth in Section 1.1(b).

(ddddddd) “Subsidiaries” means, with respect to a Person, any other Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such first Person, including, in the case of Issuer, the Persons set forth in Section 2.2(b) of the Disclosure Schedule.

(eeeeeee) “Substation” means the electrical power substation located on the parcel described as Outlot 4-2 of the ELN Campus.

(ffffff) “Tax” or “Taxes” means (i) all federal, state, local or foreign taxes, charges, fees, levies, or other similar assessments, including gross income, net income, franchise, capital, real property, personal property (whether tangible or intangible), withholding, payroll, employment, unemployment, environmental, social security (or similar, including FICA), social contribution, disability, transfer, sales, use, excise, gross receipts, net receipts, gross proceeds, net proceeds, ad valorem, profits, branch profits, license, severance, premium, windfall profits, capital gains, gaming, stamp, registration, escheat, alternative, occupation, estimated, lease, value-added, alternative or add-on minimum and all other taxes or customs duty of any kind imposed by any Governmental Authority or any charge of any kind in the nature of (or similar to) taxes whatsoever, whether disputed or not, and (ii) any charges, interest, additions to tax or penalties imposed by a Governmental Authority in respect of the items in clause (i), whether disputed or not.

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(ggggggg) “Tax Return” means any report, return, declaration, claim for refund or other statement or information filed or required to be supplied to a Governmental Authority or any other Person in connection with Taxes, including estimated returns and reports of any kind with respect to Taxes and including any schedule or attachments thereto and any amendments thereof.



(hhhhhhh) “Termination Fee” has the meaning set forth in Section 6.3(a).

(iiiiiii) “Third Party Claim” has the meaning set forth in Section 7.1(e).

(jjjjjjj) “Transaction Agreements” means this Agreement, the Corporate Services Agreement, the Second A&R LLC Agreement, the Purchaser Equity Commitment Letter, the Common Stock Purchase Warrants, the Registration Rights Agreement and the Limited Guarantee.

(kkkkkkk) “Transaction Expenses” means the aggregate amount of the Issuer Transaction Expenses and the Purchaser Transaction Expenses.

(lllllll) “Transaction Proceedings” has the meaning set forth in Section 5.13.

(mmmmmmm) “Transactions” means the transactions contemplated by the Transaction Agreements (including, for the avoidance of doubt, this Agreement).

(nnnnnnn) “Transfer Taxes” has the meaning set forth in Section 5.10.

(ooooooo) “Treasury Regulations” means the final, temporary and proposed regulations promulgated under the Code.

(ppppppp) “Unit” means membership interests the Issuer is authorized to issue.

**2. Representations and Warranties Relating to the Group Companies and the Business.** The Issuer hereby represents and warrants to the Purchaser that, except as set forth on the Disclosure Schedule attached as Schedule 6 to this Agreement, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true, correct and complete as of the Effective Date and Closing, except as otherwise indicated. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections contained in this Section 2, and the disclosures in any section of the Disclosure Schedule shall qualify other sections in this Section 2 only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections.

**2.1 Organization, Qualification, Power and Authority.** Each Group Company is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Group Company is qualified to conduct business and in good standing under the Laws of each jurisdiction where such qualification is required, except, in each case, where the lack of such qualification or the failure to be in good standing, has not and would not reasonably be expected to (i) prevent, materially impair or materially delay the ability of the Issuer to perform its obligations hereunder and (ii) be material to the Group Companies or the Business, taken as a whole. Each Group Company has the requisite power and authority to carry on the businesses in which it is engaged (including the Business) and to own, lease, operate and use the material assets, rights and properties owned or used by it, except as would not reasonably be expected to (a) prevent, materially impair or materially delay the ability of the Issuer to perform its obligations hereunder and (b) be material to the Group Companies or the Business, taken as a whole.

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## **2.2 Capitalization; Subsidiaries.**

(a) A true, complete and correct capitalization table showing the ownership of all of the issued and outstanding Equity Interests of each Group Company as of the Effective Date, for this purpose, without giving effect to the Pre-Closing Restructuring Plan, is set forth on Section 2.2(a) of the Disclosure Schedule. All of the issued and outstanding Equity Interests of the Group Companies have been duly authorized and validly issued, fully paid and were not issued in contravention of the Group Companies’ Governing Documents, any preemptive rights, subscription rights, rights of first refusal or first offer, options, warrants, convertible or exchangeable securities or similar rights or agreements or any state or federal securities Laws. None of the Group Companies has at any time issued or granted, and there are no outstanding or authorized, compensatory equity or equity-based interests with respect to the Equity Interests of any Group Company, including without limitation, any options, appreciation rights, profits interests, restricted units, phantom equity or similar awards or rights. Except as set forth in the Governing Documents of the Group Companies, there are no Encumbrances, outstanding or authorized options, warrants, phantom equity rights, purchase rights, calls, convertible securities, subscription rights, preemptive rights, rights of first refusal, registration rights, conversion rights, voting rights, exchange rights or other contracts or commitments that would

require any Group Company to issue, sell, transfer, repurchase, redeem or otherwise acquire, retire or cause to become outstanding any of the Equity Interests of the Group Companies.

(b) The Issuer does not, directly or indirectly, own any Equity Interests or other securities of any Person other than the Group Companies set forth on Section 2.2(a) of the Disclosure Schedule.

(c) No Specified Event of Default has occurred and is continuing.

2.3 Governing Documents. True, complete and correct copies of the Governing Documents for each of the Group Companies, as amended and/or restated and in effect as of the Effective Date (i) have been provided to the Purchaser prior to the Effective Date, and (ii) permit the Issuer to control all material decisions relating to such Group Companies (other than the Issuer). None of the Group Companies are in default or breach under any of such Governing Documents and no event has occurred that (with notice or lapse of time or both) would constitute a material default or breach by any of the Group Companies under the terms of such Governing Documents.

2.4 Authorization; Binding Effect. Each Group Company that is a party to any Transaction Agreement, or any agreements contemplated by the Transaction Agreements, has, or will have when executed and delivered, requisite power and authority to execute and deliver this Agreement and each of the other Transaction Agreements, or any agreements contemplated by the Transaction Agreements, to which such Group Company is or will be a party, and to perform fully its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Issuer of this Agreement has been, and by each Group Company of each of the other Transaction Agreements to which such Group Company is or will be a party, and any agreements contemplated by the Transaction Agreements to which such Group Company is or will be a party and the consummation by such Group Company of the transactions contemplated hereby and thereby have been, or will be when executed and delivered, duly and validly authorized by all necessary actions, and no other proceedings or actions on the part of any Group Company are necessary to authorize entering into this Agreement or any other Transaction Agreement executed and delivered concurrently herewith, or any agreements contemplated by the Transaction Agreements executed and delivered concurrently herewith, to which any of the Group Companies is a party or to consummate the transactions contemplated hereby and thereby. Each of this Agreement, the Transaction Agreements and any agreements contemplated by the Transaction Agreements to which any of the Group Companies are or will be a party has been, or will be when executed and delivered, duly executed and delivered by the applicable Group Companies and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes a valid and legally binding obligation of each applicable Group Company, enforceable in accordance with its terms and conditions, subject to Laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of Law governing specific performance, injunctive relief and other equitable remedies (whether considered at Law or in equity) (the "Enforceability Exceptions").

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### 2.5 Valid Issuance of Subject Units.

(a) The Subject Units, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be duly authorized, validly issued, fully paid and nonassessable and free of Encumbrances or restrictions on transfer other than restrictions on transfer under the Second A&R LLC Agreement, applicable state and federal securities Laws and liens or encumbrances created by or imposed by the Purchaser.

(b) Assuming the accuracy of the representations of the Purchaser in Section 4 of this Agreement, the Subject Units will be issued in compliance, in all material respects, with all applicable federal and state securities Laws. No "bad actor" disqualifying event described in Rule 506(d)(1)(i)-(viii) of the Securities Act (a "Disqualification Event") is applicable to the Issuer, except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3), is applicable.

(c) The Issued Units will, as of the Closing, represent in the aggregate fifteen percent (15%) of the fully diluted common equity of the Issuer (excluding profits interests of the Issuer reserved, issued or granted as set forth in the Second A&R LLC Agreement).

### 2.6 Litigation; Compliance with Law.

(a) Except as set forth in Section 2.6(a) of the Disclosure Schedule and except as would not, individually or in the aggregate, be material to the Group Companies or the Business, taken as a whole, since the Look-Back Date, (i) there are no Legal Proceedings pending or threatened in any written notice involving (x) any Group Company or (y) any member of the APLD Group (with respect to the Business or relating to this Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby), (ii) (x) no Group Company nor (y) any member of the APLD Group (with respect to the Business or relating to this

Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby) is subject to any judgment, Order or decree of any Governmental Authority and (iii) there are no settlement agreements or similar agreements or similar Contracts with any Governmental Authority and no outstanding Orders entered or issued by or subject to any Governmental Authority against or affecting (x) any of the Group Companies or (y) any member of the APLD Group (with respect to the Business or relating to this Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby). No (x) Group Company or (y) member of the APLD Group (with respect to the Business or relating to this Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby) intends to initiate any Legal Proceeding.

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(b) Except as would not, individually or in the aggregate, be material to the Group Companies or the Business, taken as a whole, (x) the Group Companies and (y) the members of the APLD Group (with respect to the Business or relating to this Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby) (i) are, and since the Look-Back Date, have been, in compliance with Law and Privacy Requirements; (ii) are not under investigation with respect to and have not been given written or, to the Knowledge of the Issuer, oral notice of, any violation of any Law or Privacy Requirements; and (iii) have not, since the Look-Back Date, received any written or, to the Knowledge of the Issuer, oral notice from any Governmental Authority regarding any actual or alleged violation of, or failure to comply with, any Law, Order or Privacy Requirement to which (1) any Group Company, or any assets owned by it or used in the Business, or (2) any member of the APLD Group, or any assets owned or used by it (with respect to the Business or relating to this Agreement, each of the other Transaction Agreements or the transactions contemplated hereby or thereby), is subject.

## 2.7 Intellectual Property; Privacy and Data Security.

(a) Section 2.7(a) of the Disclosure Schedule sets forth a list of all (i) registrations and applications for registration of the Issuer's Intellectual Property and (ii) material unregistered Intellectual Property of the Issuer for which an application is in process or, as of the Effective Date, that the Issuer intends to prepare and/or file, which are unexpired and subsisting, and to Knowledge of the Issuer, valid and enforceable. The Group Companies own or have the valid right to use all material Issuer Intellectual Property, free and clear of all Encumbrances, except Permitted Encumbrances. All Persons who have created or invented any material proprietary Issuer Intellectual Property have assigned in writing to the Issuer all of their rights in the same that do not vest initially in the Issuer by operation of Law.

(b) (i) The conduct of the Business by the Issuer, as currently conducted, does not infringe upon, misappropriate, dilute or otherwise violate the Intellectual Property of any third party, and (ii) since the Look-Back Date, the Issuer has not received written or, to the Knowledge of the Issuer, oral notice that the conduct of the Business is infringing, misappropriating, diluting or otherwise violating, or has infringed, misappropriated, diluted or otherwise violated, the Intellectual Property of any third party. To the Knowledge of the Issuer, no third party is infringing, misappropriating, diluting or otherwise violating or has infringed misappropriated, diluted or otherwise violated, any Issuer Intellectual Property, except as would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

(c) Each Group Company takes, and since the Look-Back Date has taken, commercially reasonable efforts to protect and maintain (i) the material trade secrets and confidential information of the Business and (ii) the integrity, security and continuous operation of IT Assets used in the Business (and all data, including Personal Data, processed thereby), which (x) operate and perform as required in connection with, and are adequate and sufficient for, the conduct of the Business, (y) do not contain any material malware, viruses, "trojan horses", worms, bugs, defects or other corruptants and (z) since the Look-Back Date, have not experienced any actual or attempted breaches, outages or violations of same, except for those that were resolved without material cost, liability or the duty to notify any Person.

2.8 Non-Contravention. The execution and delivery by Issuer of this Agreement and by each Group Company of any other Transaction Agreements to which such Group Company is a party, and the consummation of the Transactions, do not and will not conflict with, contravene, violate, result in a breach of or constitute a default under (with or without the giving of notice or the lapse of time or both), result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice or Consent under, or result in the imposition of any Encumbrance upon any of the assets of any Group Company or any member of the APLD Group (with respect to the Business) under, (i) any Laws, Privacy Requirements or Orders to which any Group Company or any member of the APLD Group (with respect to the Business) is subject, (ii) any provision of the Group Companies' Governing Documents or (iii) any Material Contract, except in each case of clause (i) or (iii), (1) as set forth in Section 2.8 of the Disclosure Schedule, (2) as required under applicable state and federal securities Laws, or (3) where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain Consent or the Encumbrance would not reasonably be expected, individually or in the aggregate, to be material to the Group Companies or the Business, taken as a whole.

## 2.9 Agreements; Actions.

(a) Except as set forth on Section 2.9(a) of the Disclosure Schedule, no Group Company or any member of the APLD Group (with respect to the Business) is a party to, nor is any Group Company or any member of the APLD Group (with respect to the Business) otherwise bound by, any written contract, agreement, arrangement, warranty, purchase order, note mortgage, bond, indenture, loan, license, lease, sublease, commitment or other instrument (“Contracts”) of the following types (each item disclosed or required to be disclosed on Section 2.9(a) of the Disclosure Schedule, a “Material Contract”), in each case that are in effect on the Effective Date:

(i) any Contract (A) with any Material Supplier or (B) pursuant to which any Group Company or any member of the APLD Group (with respect to the Business) is required to make aggregate payments in excess of Two Million Dollars (\$2,000,000) in any fiscal year and Five Million Dollars (\$5,000,000) in the aggregate during the term thereof, in each case, excluding purchase orders entered into in the Ordinary Course of Business;

(ii) any Contract pursuant to which any Group Company or any member of the APLD Group (with respect to the Business) is entitled to receive aggregate payments in excess of Two Million Dollars (\$2,000,000) in any fiscal year and Five Million Dollars (\$5,000,000) in the aggregate during the term thereof;

(iii) any Contract (A) relating to the acquisition (by merger, purchase of stock or assets or otherwise) of any operating business or the capital stock of any Person or (B) containing any outstanding “earn out” or other contingent payment obligations or other deferred consideration obligations;

(iv) any Contract relating to the incurrence or borrowing of money, or the assumption or guaranty of another Person’s borrowing of money or other obligation, including all notes, mortgages, indentures and other obligations, any material capital lease obligations or purchase money indebtedness, and all guarantees of performance, agreements and instruments for or relating to any lending or borrowing (other than advances to employees for expenses or transactions with customers on credit, in each case in the Ordinary Course of Business);

(v) any Contract granting any Person an Encumbrance on all or any part of (A) the material assets of any Group Company or (B) the HPC Assets held by any member of the APLD Group, other than Permitted Encumbrances;

(vi) any Contract under any Group Company or any member of the APLD Group (with respect to the Business) has granted or received a material license, sublicense or other rights to IT Assets or Intellectual Property, other than (A) “off the shelf” non-exclusive licenses pursuant to which Intellectual Property is made available through regular commercial distribution channels on standard terms and conditions and (B) agreements entered into in the Ordinary Course of Business pursuant to which Intellectual Property is non-exclusively licensed to third parties;

(vii) any joint venture, partnership or strategic alliance agreement (including, without limitation operator, asset manager, profit, loss, cost or liabilities sharing or other similar agreement);

(viii) any Contract (A) containing a covenant limiting in any material respect the right of any Group Company or any member of the APLD Group (with respect to the Business) to engage in any line of business, to compete with any Person in any line of business, or to compete with any Person or the manner or locations in which any of them may engage, (B) prohibiting or limiting the right of any Group Company or any member of the APLD Group (with respect to the Business) to make, sell or distribute any products or services or (C) containing a “most favored nation” or similar clause in favor of a third party;

(ix) any settlement, conciliation, or similar Contract arising out of or related to any claim asserted by any Person (including any Governmental Authority);

(x) any Contract obligating a Group Company to sell, purchase or otherwise obtain any product or service exclusively to or from a single party or containing any “take or pay”, most favored nation pricing, rights of first refusal, rights of first offer or negotiation, minimum commitments, total requirements or similar rights or provisions;

(xi) any Lease;

(xii) any Contract with any Governmental Authority;

(xiii) any power purchase or similar agreement;

(xiv) any Contract under which a Group Company or any member of the APLD Group (with respect to the Business) is required to provide any Person with power supply;

(xv) any Collective Bargaining Agreement;

(xvi) any Contract relating to the acquisition by the Group Companies or any member of the APLD Group (with respect to the Business) of any real property;

(xvii) any Contract pursuant to which any of the Group Companies or any member of the APLD Group (with respect to the Business) is a sublessor or grantor, granting to another Person any right to the possession, lease, occupancy or enjoyment of the Leased Real Property;

(xviii) any Data Center Lease;

(xix) except for any Leases and Data Center Leases, any Contract under which any of the Group Companies or any member of the APLD Group (with respect to the Business) is lessor of or permits any third party to hold or operate, in each case, any tangible property (other than real property);

(xx) except for any Leases and Data Center Leases, any Contract under which a Group Company or any member of the APLD Group (with respect to the Business) is lessee of or holds or operates, in each case, any tangible property (other than real property), owned by any other Person, excluding those that will be fully paid-off prior to or at the Closing;

(xxi) any Contract for the sale, assignment, license or other disposition of any of the assets of the Group Companies or any member of the APLD Group (with respect to the Business) (other than obsolete equipment in the Ordinary Course of Business);

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(xxii) any Contract under which any Group Company has advanced or loaned any other Person an amount in excess of \$25,000 (other than cash advances to employees of the Group Companies for reimbursable travel and other business expenses incurred in the Ordinary Course of Business);

(xxiii) any Contract (including offer letters) for the employment or engagement of (A) any employee, officer, director, consultant or other individual service provider by any Group Company or (B) any Specified Employee or other member of the APLD Group which is reasonably expected to be transferred to any Group Company prior to or following the Closing, in each case, providing for annual base salary or consulting fees in excess of \$100,000, whether on a full-time, consulting or other basis;

(xxiv) any Contract for which the primary purpose is to provide an indemnity or guaranty;

(xxv) any Contract granting a power of attorney or similar authority to any unaffiliated third party with respect to the Business or any Group Company;

(xxvi) Contracts not otherwise captured by this Section 2.9(a) that are material to the ELN-A Project, the ELN Campus or the HPC Assets; and

(xxvii) any Contract to enter into any of the foregoing.

(b) The Issuer made available to the Purchaser a true, correct and complete copy of each written Material Contract and any amendments thereto. Each Material Contract is a legal, valid, binding and enforceable obligation of (x) the Group Companies or (y) if applicable, such member of the APLD Group (with respect to the Business) party thereto, enforceable in accordance with its terms and conditions, subject to the Enforceability Exceptions. No Group Companies nor, to the Knowledge of the Issuer, any other party to such Material Contract is in breach or default (or is alleged to be in breach or default) under such Material Contract, and no event, circumstance or fact has occurred which, with the passage of time or the giving of notice or both, would constitute a default or breach under, or would result in a termination, modification, acceleration or vesting of any rights or obligations or loss of benefits under, any Material Contract, in each case, except for such breaches and defaults, as applicable, that would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole. No Group Company has received written notice that any counterparty to any Material Contract will cease doing business with the Group Companies or intends to stop, materially and adversely decrease the volume of, or change, adjust, alter or otherwise materially modify any of the material terms (whether related to payment, price or otherwise) of such Material Contract.

2.10 Affiliate Transactions. Except for (a) the employment and equity agreements and arrangements entered into by the Issuer set forth in Section 2.10 of the Disclosure Schedule, the Corporate Services Agreement and the other Transaction Agreements, (b) any other intercompany arrangements or transactions that (x) are terminable at will, (y) will be replaced by the Corporate Services Agreement, and (z) will not result in any ongoing obligations of any of the Group Companies after the Closing other than as set forth in the Corporate Services Agreement, (c) participation in Employee Benefit Plans by employees, no officer, director, manager, equityholder or Affiliate of the Issuer or, to the Knowledge of the Issuer, any family member of such Person (clauses (a), (b) and (c), the “Permitted Affiliate Transactions”) (i) owes any amount to any Group Company or any member of the APLD Group (with respect to the Business), nor does any Group Company or any member of the APLD Group (with respect to the Business) owe any amount to, nor has any Group Company or any member of the APLD Group (with respect to the Business) made or committed to make any loan or extend or guarantee credit to or for the benefit of, any such Person, (ii) has purchased, acquired or leased any property, rights or services from, or sold, transferred or leased any assets, property, rights or services to any Group Company or any member of the APLD Group (with respect to the Business) other than transfers in connection with the Pre-Closing Restructuring between direct and indirect wholly-owned Subsidiaries of APLD prior to the Effective Date (each of which will be settled and discharged in full effective at or prior to the Closing without liability or obligation to the Group Companies), (iii) entered into or been subject to any current or pending Contract or transaction with any Group Company or any member of the APLD Group (with respect to the Business) or (iv) received any financial or other benefits from any Group Company or any member of the APLD Group (with respect to the Business), other than the payment of compensation for services rendered (clauses (i) to (iv), collectively, “Affiliate Transactions”).

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2.11 Rights of Registration and Voting Rights. (i) The Issuer is not under any obligation to register under the Securities Act any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities and (ii) no Group Company has entered into any agreements with respect to the voting of any securities of the Issuer.

## 2.12 Real Estate Matters.

(a) Section 2.12(a) of the Disclosure Schedule sets forth a true, correct and complete list of all real property owned by the Issuer or its Subsidiaries (the “Owned Properties”). Such Section of the Disclosure Schedule sets forth the title owner of the Owned Properties, the estate in which each interest is held and provides a description of the principal improvements and buildings located on the Owned Properties.

(b) With respect to the Owned Properties, except as set forth on Section 2.12(b) of the Disclosure Schedule:

(i) a member of the Group Companies has good and marketable fee simple title of record to the Owned Properties, free and clear of any Encumbrance other than Permitted Encumbrances;

(ii) there are no pending or threatened in writing (1) condemnation claims, suits or proceedings relating to the Owned Properties, (2) claims, suits or proceedings relating to or adversely affecting any right, title or interest of the Issuer or any of its Subsidiaries in and to the Owned Properties or (3) other matters affecting adversely the current operation, occupancy or value of any Owned Properties or the development of the ELN-A Project, the ELN Campus or the HPC Assets, including proceedings for change of zoning or use;

(iii) the buildings and improvements located on the Owned Property and those that will be constructed in connection with the ELN-A Project, the ELN Campus or the HPC Assets (1) are (or will be) located entirely within the boundary lines of parcels of land wholly owned by a member of the Group Companies, (2) are not (and will not be) in violation of any applicable setback requirements, zoning Laws and ordinances (and none of the properties or buildings or improvements thereon are subject to “permitted non-conforming use” or “permitted non-conforming structure” classifications), building or fire code requirements, permits, licenses or other forms of approval by any Governmental Authority and (3) do not (and will not) encroach on any easement which may burden the land;

(iv) the Owned Properties are not located within any flood plain (such that a mortgagee would require a mortgagor to obtain flood insurance) or subject to any similar type of restriction for which any permits or licenses necessary to the use thereof have not been obtained;

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(v) (1) the Group Companies and the applicable members of the APLD Group (with respect to the Business) have received all approvals and entitlements of Governmental Authorities (including licenses, variances and permits) required under applicable law in connection with (x) the current operations of ELN-A Project, the ELN Campus or the HPC Assets (including a site plan approval and approval with respect to the use of the ELN-A Project as a data center), and (y) the ownership or current operation thereof and have been operated and maintained in accordance with applicable Laws, ordinances, rules and regulations, in all material respects, and (2) neither the Issuer nor any of its Subsidiaries has received any written notice of any actual or potential suspension, revocation or non-renewal of any such approval, permit or entitlement;

(vi) there are no Contracts granting to any party or parties the right of use or occupancy of any portion of any of the Owned Properties;

(vii) there are no outstanding options or rights of first offer or rights of first refusal to purchase the Owned Property, or any portion thereof or interest therein;

(viii) other than the Group Companies, there are no parties in possession of the Owned Properties;

(ix) the Owned Properties abut on and have direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the parcel of Owned Property, with adequate curb cuts available; and there is no pending or threatened in writing or, to the Knowledge of the Issuer, orally, termination of the foregoing access rights;

(x) neither any Group Company nor any member of the APLD Group (with respect to the Business) has received written notice of (1) any special assessment, confirmed or unconfirmed, which may affect any Owned Properties or (2) violation, proceeding or investigation from any governmental authority, insurance company or board of fire underwriters or other person with respect to the Owned Property (including those requiring or calling attention to the need for any work, alterations, repairs, removal, cleanup or construction on or at any Owned Properties by reason of any building, safety, fire or other Law or regulation);

(xi) there is no material unrepaired casualty damage to any portion of the Owned Property;

(xii) the Owned Property comprise all of the real property necessary for development, use and operation of the ELN-A Project, the ELN Campus and the HPC Assets; and

(xiii) neither any Group Company nor any member of the APLD Group (with respect to the Business) has received written notice that it is in default under any easement, reciprocal easement, restrictive covenant or other matter of record recorded against the Owned Property necessary for development, use and operation of the ELN-A Project, the ELN Campus and the HPC Assets, and there has not occurred any event that with the lapse of time or the giving of notice, or both, would constitute such a default under any of the foregoing.

(c) Neither the Issuer nor any of its Subsidiaries is a party to any Leases, licenses or similar agreements. There is no Leased Real Property.

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## 2.13 Sanctions; Anti-Corruption; Anti-Money Laundering Matters.

(a) Since the Look-Back Date, none of the Group Companies nor any member of the APLD Group (with respect to the Business), their respective officers, directors or employees, or to the Knowledge of the Issuer, any of their agents or representatives, directly or indirectly:

(i) has used any funds of such Group Company for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;

(ii) has paid, offered or promised to make, or authorized the payment or giving of money, or anything else of value, to any (1) executive, official, employee or person acting in an official capacity for or on behalf of a government department, government agency or a government-controlled entity or a public international organization (e.g., the International Monetary Fund or the World Bank), (2) political party or official thereof or candidate for political office (each of the foregoing a “Government Official”), or (3) any other Person, in each case, while knowing or believing that all or some portion of the money or value will be paid, offered, given or promised to a Government Official or other Person for the purposes of improperly obtaining or retaining business or securing any improper advantage or in other circumstances and, in each case, when such offer, payment or promise would be unlawful;

(iii) has taken any action in violation of applicable Anti-Corruption Laws;

(iv) has participated in any transaction or business dealing with any Sanctioned Person or in any Sanctioned Country in violation of any Sanctions, or otherwise engaged in any activity, practice or conduct in violation of any Sanctions, export or import control Laws, or applicable Anti-Money Laundering Laws;

(v) is a Sanctioned Person, or acting for or on behalf of a Sanctioned Person; or

(vi) is or has been subject to any investigation, voluntary disclosure, prosecution or enforcement action by any Governmental Authority related to, or has received any written communication from a Governmental Authority indicating or alleging that it is or may be in violation of, or may be subject to any investigation or inquiry related to, any actual or alleged breach of any Anti-Corruption Law, Anti-Money Laundering Law, or Sanctions.

(b) Since the Look-Back Date, the Group Companies and each member of the APLD Group (with respect to the Business) have instituted and maintained or been subject to policies and procedures, and a system of internal controls, reasonably designed to ensure continued compliance with applicable Anti-Corruption Laws, including those for the detection, prevention and reporting of violations.

## 2.14 Changes.

(a) Except as set forth on Section 2.14(a) of the Disclosure Schedule, since January 1, 2024, each Group Company and each applicable member of the APLD Group (with respect to the Business) has conducted its Business in the Ordinary Course and there has not been any:

(i) damage, destruction or loss of material tangible personal property or IT Assets of any Group Company or any member of the APLD Group (with respect to the Business), whether or not covered by insurance, that would be material to the Group Companies or the Business, taken as a whole;

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(ii) waiver or compromise by any Group Company or any member of the APLD Group (with respect to the Business) of a valuable right or of a material debt owed to it;

(iii) satisfaction or discharge of any Encumbrance or payment of any obligation by any Group Company or any member of the APLD Group (with respect to the Business), except in the Ordinary Course of Business or the refinancing of any existing debt if and to the extent set forth on Section 2.24(b) of the Disclosure Schedule;



(iv) termination, cancellation, breach, default under or amendment to any existing Material Contract, except for amendments entered into in the Ordinary Course of Business if and the extent set forth on Section 2.9(a) of the Disclosure Schedule;

(v) Encumbrance, other than a Permitted Encumbrance, created by any Group Company or any member of the APLD Group (with respect to the Business) with respect to any of the material properties or assets of the Business;

(vi) loans or guarantees made by any Group Company or any member of the APLD Group (with respect to the Business) to or for the benefit of its employees, officers or directors, or any members of their immediate families, other than travel advances and other advances made in the Ordinary Course of Business;

(vii) sale, assignment, transfer, license or abandonment of any material Issuer Intellectual Property or any material Intellectual Property owned by any member of the APLD Group (with respect to the Business), other than non-exclusive licenses in the Ordinary Course of Business; or

(viii) any Effect that has had or would reasonably be expected to result in a Material Adverse Effect.

(b) Except as contemplated by this Agreement or Section 2.14(b) of the Disclosure Schedule, since the Balance Sheet Date, no Group Company has taken any action that would, if taken after the Effective Date, would have required the prior written consent of the Purchaser under Section 5.1.

#### 2.15 Employee Matters.

(a) Section 2.15(a) of the Disclosure Schedule sets forth a true, complete and correct list of each Employee Benefit Plan offered, maintained or sponsored by (i) any Group Company, or (ii) a member of the APLD Group for the benefit of any Specified Employee (the "Specified Employee Plans"). Issuer has provided the Purchaser with complete and correct copies of all Specified Employee Plans. There are no severance, bonus, retention, change in control or similar payments due to any Specified Employees as a result of or in connection with the transactions contemplated by this Agreement under the Specified Employee Plans or otherwise. No Specified Employee is subject to any Collective Bargaining Agreement.

(b) Section 2.15(b) of the Disclosure Schedule sets forth a true, complete and correct list of employees and service providers that will be transferred to the Group Companies by any member of the APLD Group in accordance with Section 5.12(e) (collectively, the "Specified Employees"). Except as set forth on Section 2.15(b) of the Disclosure Schedule, as of the Closing Date, no Group Company will serve as the employer entity of any employees or service providers.

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(c) Since the Look-Back Date, each Employee Benefit Plan offered, maintained or sponsored by a member of the APLD Group for the benefit of current or former employees, officers, directors or independent contractors with respect to (A) any Group Company, or (B) the Business, or with respect to which a member of the APLD Group has any obligation or liability, contingent or otherwise, has been, in all material respects, maintained and administered in accordance with the terms of such Employee Benefit Plan and the requirements of applicable Laws, including ERISA and the Code, except where the failure to do so would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

(d) Since the Look-Back Date, each Group Company is and has been in material compliance with all applicable Laws governing employment, labor and employment practices, including with respect to any Collective Bargaining Agreement, in all jurisdictions within which the Group Companies operate, except where failure to do so would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

(e) The Group Companies have made available to the Purchaser all material inspection reports or orders issued by a Governmental Authority to the Group Companies or any member of the APLD Group (with respect to the Business) since the Look-Back Date under the Occupational Health and Safety Act and the employee occupational health and safety Laws of any other applicable jurisdiction. The Group Companies or a member of the APLD Group (with respect to the Business) have implemented the necessary safety and health programs in compliance in all material respects with the Occupational Safety and Health Act. The Group Companies or a member of the APLD Group (with respect to the Business) has in all material respects properly recorded all injuries and illnesses on its OSHA 300's and OSHA 301's or equivalent since the Look-Back Date, and neither the Group Companies nor any member of the APLD

Group (with respect to the Business) has received any repeat or willful citations from the Occupational Safety and Health Administration or state safety and health agencies.

## 2.16 Taxes.

(a) There are no income or other material Taxes due and payable, whether or not shown as due on any Tax Return, by, or with respect to, any Group Company or any member of the APLD Group (with respect to the HPC Assets) that have not been timely paid in full. All income and other material Taxes not yet due and payable by, or with respect to, any Group Company or any member of the APLD Group (with respect to the HPC Assets) have been fully accrued and reserved on the Financial Reports in accordance with GAAP. All material Taxes with respect to any Group Company or any member of the APLD Group (with respect to the HPC Assets) required to be deducted, withheld and paid in connection with amounts paid or owing to any Person have been deducted, withheld and timely paid over to the appropriate Governmental Authority.

(b) There have been no material disputes, investigations, proceedings, claims, examinations or audits with respect to any Taxes or Tax Returns of any Group Company or any member of the APLD Group (with respect to the HPC Assets) by any applicable Governmental Authority, and no Group Company and no member of the APLD Group (with respect to the HPC Assets) has received written notice of an intent (and APLD has no Knowledge of any grounds) to commence any such dispute, investigation, proceeding, claim, examination or audit that remains outstanding. No assessment of Tax has been proposed in writing against any Group Company or any member of the APLD Group (with respect to the HPC Assets) or any of their assets or properties that remains outstanding.

(c) All income or other material Tax Returns required to have been filed by, or with respect to, any Group Company or any member of the APLD Group (with respect to the HPC Assets) have been duly and timely filed, and all such Tax Returns are true, correct and complete in all material respects. There are in effect no waivers or extensions of applicable statutes of limitations with respect to Taxes for any year of any Group Company or any member of the APLD Group (with respect to the HPC Assets).

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(d) No claim has ever been made by a Governmental Authority in a jurisdiction where any Group Company or any member of the APLD Group (with respect to the HPC Assets) does not file a specific type of Tax Return that any such Group Company or any such member of the APLD Group (with respect to the HPC Assets) is or may be subject to taxation by, or required to file such Tax Returns in, that jurisdiction (and APLD has no Knowledge of the basis for any such claim to be made).

(e) There are no Encumbrances with respect to Taxes upon any asset of any Group Company or any member of the APLD Group (with respect to the HPC Assets), other than Taxes not yet due and payable.

(f) No Group Company and no member of the APLD Group (with respect to the HPC Assets) will be required to include amounts in income, or exclude items of deduction, in a taxable period (or portion thereof) beginning after the Closing Date as a result of (i) a change in or incorrect method of accounting occurring prior to the Closing, (ii) an installment sale or open transaction arising in a taxable period (or portion thereof) ending on or before the Closing Date, (iii) a prepaid amount received, or paid, prior to the Closing, (iv) a "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state or local income Tax Law) executed on or prior to the Closing Date or (v) any intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state or local income Tax Law), where such intercompany transaction occurred or excess loss account existed prior to Closing.

(g) Except as set forth in Section 2.16(g) of the Disclosure Schedules, no Group Company and no member of the APLD Group (with respect to the HPC Assets) (i) has ever been a member of an affiliated group filing a consolidated, joint, unitary or combined Tax Return, (ii) is party to or has any obligation under any Tax sharing, Tax indemnification, or Tax allocation agreement or similar contract or arrangement (other than an agreement providing for Tax indemnification that (x) either was entered into in the ordinary course of business or is disclosed on Section 2.9(a) of the Disclosure Schedule and (y) which does not primarily focus upon Tax matters) or (iii) has any liability for the Taxes of any other person other than its Subsidiaries under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by contract or otherwise.

(h) At all times since its formation and through the Effective Date, each Group Company has been properly classified as a disregarded entity for U.S. federal, state and local Tax purposes, and no election under Treasury Regulations Section 301.7701-3, or any corresponding provision of state or local income Tax Law, has been made with respect to any Group Company.

2.17 Insurance. Section 2.17 of the Disclosure Schedule sets forth a true, complete and correct list of each material insurance policy and self-insurance program maintained as of the Effective Date by the Group Companies with respect to which a Group Company, or any of its directors, officers or employees (in such capacity) is a named insured or other the beneficiary of coverage (collectively, the “Insurance Policies”), true and complete copies of which have been made available to the Purchaser. The Insurance Policies provide insurance coverage as required under Law and/or pursuant to any applicable Material Contract. Neither the Issuer nor any of its Affiliates have received any written notice of pending cancellation, termination, non-renewal or disallowance of, material premium increase with respect to, material reduction in coverage or claim or audit of, or material alteration of coverage under, any of such Insurance Policies and, to the Knowledge of the Issuer, no such action has been threatened. All such Insurance Policies are in full force and effect, fully paid or current with regard to payment schedules, and valid and binding in accordance with their terms, and there are no material defaults or breach under any such Insurance Policy by the Issuer or its Affiliates, as applicable, or, to the Knowledge of the Issuer, the applicable insurer. The consummation of the Transaction will not result in the termination of the Insurance Policies. There are no claims by the Group Companies pending, and since January 1, 2024, the Issuer has not made any claim, under such Insurance Policies with respect to which an insurer has, in a written notice to the Issuer, denied or disputed its rights with respect to coverage other than customary reservations of rights and no insurer has, to the Knowledge of the Issuer, threatened to cancel any of the Insurance Policies. The Group Companies have reported to their respective insurers all material claims and circumstances that may give rise to a material claim under any of the Insurance Policies.

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2.18 Permits. (a) the Group Companies or the applicable members of the APLD Group (with respect to the Business) hold all permits, licenses, approvals, certificates, entitlements and other authorizations of and from all Governmental Authorities necessary for (1) the lawful conduct of the Business by the Group Companies and (2) the operations of the ELN-A Project, the ELN Campus and the HPC Assets, including all air permits and registrations (collectively, the “Material Permits”), (b) the Material Permits are in full force and effect, (c) the Group Companies and the applicable members of the APLD Group (with respect to the Business) are in compliance with the Material Permits in all material respects and have the ability to obtain any Material Permits as and when necessary for planned future operations of the Business and (d) there is no action, suit, proceeding or investigation pending or threatened by a Governmental Authority that would reasonably be expected to lead to the revocation, cancellation, failure to renew, limitation, suspension or restriction of any such Material Permit.

2.19 Environmental Matters.

(a) Each of the Group Companies and each applicable member of the APLD Group (with respect to the Business) is and has been in compliance, in all material respects, with all applicable Environmental Laws.

(b) The Group Companies or the APLD Group (with respect to the Business) has, as applicable, obtained and maintained in force all material permits, licenses and authorizations required by Environmental Laws for the operation of the Business and are and have been in compliance in all material respects therewith.

(c) Neither the Group Companies nor any member of the APLD Group (with respect to the Business) has received any written notice, report or other information from any Governmental Authority or other Person of any actual or alleged liability pursuant to Environmental Laws or of any asserted present or past failure to comply with any Environmental Laws, which failure has not been appropriately addressed and resolved without, to the Knowledge of the Issuer, further liability or obligation.

(d) There are no events, conditions or circumstances (including, without limitation, any present or past release or disposal of, contamination by, or exposure of any Person to any hazardous, or toxic substance, material or waste) that has resulted or, to the Knowledge of the Issuer, would result in material liability pursuant to Environmental Laws for any Group Company or any member of the APLD Group (with respect to the Business).

2.20 No Finder’s Fees. No Group Company has any liability or obligation to pay any fees or commissions to any broker, finder, agent or similar advisor with respect to the Transactions (whether under or pursuant to any written or oral contract, agreement, arrangement, understanding or otherwise). No Group Company will be liable for any Issuer Transaction Expenses in excess of \$3,000,000.

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2.21 Material Suppliers. Section 2.21 of the Disclosure Schedule sets forth a true, correct and complete list of the top ten (10) suppliers or vendors to the Group Companies and the Business (based on the aggregate purchase price of raw materials, supplies or other products or services (excluding financial or legal and professional services) ordered) for the one (1) year period preceding December 31, 2024 (the “Material Suppliers”). No Group Company has received any written or, to the Knowledge of the Issuer, oral notice that (i) there has been any material adverse change in the price of any raw materials, supplies or other products or services provided by any such supplier or (ii) any such supplier will not sell raw materials, supplies and other products and services to the Group Companies or the Business after the Closing Date on terms and conditions that are substantially similar to those used in its current sales to the Group Companies or the Business, as applicable, subject to general and customary price increases (whether, in each case, as a result of the execution of this Agreement or the consummation of the Transactions or otherwise), in each case, except to the extent that the foregoing would not reasonably be expected to be, individually or in the aggregate, material to the Business.

## 2.22 Assets.

(a) The HPC Assets are sufficient for the conduct of the Business and constitute all of the rights, property and assets necessary to conduct the Business, in each case, as conducted on the Effective Date. As of the Closing and taking into account the services to be received under the Corporate Services Agreement, the Group Companies and members of the APLD Group (with respect to the Business) have good and valid title to, or otherwise have the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement (including as will be set forth in the Corporate Services Agreement), all of the HPC Assets, in each case free and clear of any Encumbrances, except for Permitted Encumbrances, such that the Group Companies have (together with services under the Corporate Services Agreement) sufficient assets, properties, Contracts and rights to operate the Business as conducted on the Effective Date in connection with the ELN-A Project.

(b) The plants, buildings, structures, material equipment and other material tangible personal property included in the HPC Assets are in good repair, working order and operating condition in all material respects, subject to ordinary wear and tear.

(c) As of the Effective Date, the Issuer has good and valid title to, and ownership of, the Substation, free and clear of any Encumbrances, except for Permitted Encumbrances.

## 2.23 Business Operations and Pre-Operational Data Centers.

(a) No Group Company or any member of the APLD Group (with respect to the Business) owns or operates any operational data center.

(b) Section 2.23(b) of the Disclosure Schedule sets forth a true, correct and complete list of all Pre-Operational Data Centers together with their projected power capacity as of the Effective Date. Except as would not reasonably be expected to be, individually or in the aggregate, material the Group Companies or the Business, taken as a whole, each Pre-Operational Data Center is being, or will be, constructed or developed with (i) a fully-functioning fire suppression system to the extent required by Law; (ii) fully-functioning equipment and facilities, sufficient for such Pre-Operational Data Center to receive electric energy from the applicable utility up to the applicable peak contractual demand of such Pre-Operational Data Center; (iii) an executed Contract for the purchase of electric energy from a utility or third-party supplier, up to the applicable peak demand; (iv) functioning sources of emergency power, sufficient to permit such Pre-Operational Data Center to maintain substantially normal operations in the event of short-term utility power interruptions; and (v) functioning cooling, power, humidity, network and security facilities and equipment to the extent required by Law and as required to fulfill the requirements of the applicable Contract. To the Knowledge of the Issuer, there are no circumstances, including grid conditions, interconnection requirements, availability of interconnection facilities, availability of electric energy, or other circumstances related to the delivery of electric energy that would prevent in any material respect any Pre-Operational Data Center from receiving electric energy up to the applicable peak demand of such Pre-Operational Data Center.

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(c) Section 2.23(c) of the Disclosure Schedule sets forth the approved specifications for the Physical Network. The Physical Network is being, or will be, constructed for each Pre-Operational Data Center in accordance with the approved specifications in all materials respects, and is free and clear of any Encumbrances other than Permitted Encumbrances.

(d) To the Knowledge of the Issuer, there are no adverse physical conditions or defects affecting any Pre-Operational Data Center or the Physical Network, other than adverse conditions or defects that would be repaired as identified in the Ordinary Course of Business.

(e) Section 2.23(e) of the Disclosure Schedule sets forth the power availability applicable to each Pre-Operational Data Center.

(f) No Group Company or any member of the APLD Group (with respect to the Business) is party to any Contract or other obligation to provide electric power to any Person except in the Ordinary Course of Business. All utility and municipal services necessary for the proposed use and occupancy of each Pre-Operational Data Center are or are reasonably expected to be available, in each case, except as would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

(g) All power and cooling equipment used by the Group Companies or any member of the APLD Group (with respect to the Business) has, since the date of installation, been subject to commercially reasonable, recurring preventative maintenance consistent with customary and appropriate industry standards in all material respects and currently is supported by relevant manufacturers.

(h) The Group Companies or a member of the APLD Group (with respect to the Business) maintain, or will maintain, commercially reasonable security systems at the ELN Campus (including any expansions thereto under construction as of the Effective Date) for which the Group Companies or the APLD Group (with respect to the Business) receive security services and otherwise maintain the security of the ELN Campus (including any expansions thereto under construction).

(i) Except as set forth on Section 2.23(i) of the Disclosure Schedule, there are no current material cost overruns in excess of \$5,000,000 or completion delays in excess of sixty (60) days as of the Effective Date with respect to the total budgeted costs and the schedule for development and construction, respectively, of any Pre-Operational Data Centers.

(j) The development and construction of each Pre-Operational Data Center is being carried out (i) in a good and workmanlike manner, consistent with applicable codes of practice in the relevant jurisdiction; (ii) using only materials of a quality consistent with applicable codes of practice and suitable for buildings of the nature and quality being developed; (iii) in compliance with all Laws and the terms and provisions of any Material Permits issued with respect thereto; and (iv) in compliance with any required specifications and date for completion applicable thereto in any applicable Contract, or pursuant to any permit, approval or Consent (or Law pursuant to which any of the foregoing were issued) in each case, other than as would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

(k) Section 2.23(k) of the Disclosure Schedule contains a true and correct list, as of the Effective Date, of all Data Center Leases, along with the amount of power leased or licensed, or anticipated to be leased or licensed, pursuant to each such Data Center Lease as of the Effective Date.

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(l) Each applicable Group Company has obtained all Material Permits required under Laws for the construction and development that is ongoing at the applicable Pre-Operational Data Center, and such Material Permits and entitlements are in full force and effect, and are not the subject of any pending appeal, except where the failure to obtain such Material Permits or entitlements would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

## 2.24 Financial Reports.

(a) Section 2.24(a) of the Disclosure Schedule contains true and correct copies of the unaudited pro forma income statement and balance sheet of the Group Companies as of October 31, 2024 (the "Balance Sheet Date") (the "Financial Reports"). The Financial Reports were prepared in accordance with GAAP and applicable Law in all material respects, fairly present in all material respects the financial position and results of operations of the Group Companies (on a consolidated basis) for the periods described therein and were derived from the books and records of the Group Companies in all material respects.

(b) Except as set forth in Section 2.24(b) of the Disclosure Schedule, the Group Companies do not have any indebtedness for borrowed money.

## 2.25 Absence of Undisclosed Liabilities; Internal Controls.

(a) None of the Group Companies have any liabilities or obligations, including those that would have been required to be reflected in, or reserved against on, on a consolidated balance sheet of the Group Companies or in the notes thereto prepared in accordance with GAAP, other than liabilities (i) as and to the extent specifically reflected or reserved against on the Financial Reports,

(ii) incurred in the Ordinary Course of Business since the Balance Sheet Date (none of which is a liability resulting from breach of contract, breach of warranty, tort, infringement or misappropriation); (iii) incurred as required by this Agreement or otherwise required in connection with the Transaction; or (iv) that otherwise would not be, or would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies, taken as a whole.

(b) Except as set forth on Section 2.25(b) of the Disclosure Schedule, APLD has established and maintains a system of internal accounting controls over financial reporting sufficient in all material respects to provide reasonable assurances (i) regarding the reliability of financial reporting related to the Group Companies or the Business and the preparation of financial statements in accordance with GAAP as in effect as of the date of such financial statements; (ii) that transactions, receipts and expenditures of the Group Companies or the Business are being executed and made only in accordance with appropriate authorizations of management and the board of directors, board of managers or similar governing body of the applicable Group Company or member of the APLD Group (with respect to the Business); (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Group Companies or the Business; and (iv) that accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. No Person has reported to any member of the APLD Group or any Group Company, and there has been no, fraud or intentional misconduct in the preparation of the Financial Reports or in any of the books and records of the APLD Group or any Group Company upon which the Financial Reports have been based.

2.26 Public Utility. No Group Company is, and as a result of the consummation of the Transactions, neither the Purchaser nor any Group Company would be, regulated as a “public utility”, “public service company” or similar designation, or as a “holding company” or “affiliate” thereof, under applicable Laws by any Governmental Authority.

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3. Representations and Warranties of APLD. APLD hereby represents and warrants to the Purchaser that, except as set forth on the Disclosure Schedule attached as Schedule 6 to this Agreement, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true, correct and complete as of the Effective Date and Closing, except as otherwise indicated. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections contained in this Section 3.

3.1 Organization, Qualification, Power and Authority. APLD is a corporation, duly organized, validly existing and in good standing under the Laws of the State of Nevada. APLD is qualified to conduct business and in good standing under the Laws of each jurisdiction where such qualification is required, except, in each case, where the lack of such qualification or the failure to be in good standing, has not and would not reasonably be expected to (a) prevent, materially impair or materially delay the ability of APLD to perform its obligations hereunder and (b) be material to the Group Companies or the Business. APLD has the requisite power and authority to carry on the businesses in which it is engaged and to own, lease, operate and use the material assets, rights and properties owned or used by it, except as would not reasonably be expected to (a) prevent, materially impair or materially delay the ability of APLD to perform its obligations hereunder and (b) be material to the Group Companies or the Business.

3.2 Authorization: Binding Effect. APLD and each of its Subsidiaries that is a party to any Transaction Agreement, or any agreements contemplated by the Transaction Agreements, has, or will have when executed and delivered, requisite power and authority to execute and deliver this Agreement and each of the other Transaction Agreements, or any agreements contemplated by the Transaction Agreements, to which APLD or any of its Subsidiaries is a party, perform fully its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by APLD and any of its Subsidiaries of this Agreement, each of the other Transaction Agreements, and any agreements contemplated by the Transaction Agreements to which any of APLD or its Subsidiaries is a party and the consummation by APLD and any of its Subsidiaries of the transactions contemplated hereby and thereby have been, or will be when executed and delivered, duly and validly authorized by all necessary actions, and no other proceedings or actions on the part of APLD or any of its Subsidiaries are necessary to authorize entering into this Agreement or any other Transaction Agreement executed and delivered concurrently herewith, or any agreements contemplated by the Transaction Agreements executed and delivered concurrently herewith, to which APLD or any of its Subsidiaries is a party or to consummate the transactions contemplated hereby and thereby. Each of this Agreement and the Transaction Agreements, and any agreements contemplated by the Transaction Agreements to which APLD or any of its Subsidiaries are or will be a party, has been, or will be when executed and delivered, duly executed and delivered by APLD or any such Subsidiaries, as applicable, and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes a valid and legally binding obligation of APLD or any such Subsidiaries, as applicable, enforceable in accordance with its terms and conditions, subject to the Enforceability Exceptions.

3.3 Non-Contravention. The execution and delivery of this Agreement and any other Transaction Agreements to which APLD is a party, and the consummation of the Transactions, do not and will not conflict with, contravene, violate, result in a breach of or constitute a default under (with or without the giving of notice or the lapse of time or both), result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice or Consent under, or result in the imposition of any Encumbrance upon any of the assets of APLD under, (i) any Laws or Orders to which APLD is subject, (ii) any provision of APLD's Governing Documents or (iii) any Contract to which APLD is a party or by which any of its properties or assets may be bound, except in each case of clause (i) or (iii), (1) as set forth in Section 3.3(a) of the Disclosure Schedule, or (2) where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain Consent or the Encumbrance would not reasonably be expected to be, individually or in the aggregate, material to the Group Companies or the Business, taken as a whole.

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### 3.4 Sanctions; Anti-Corruption; Anti-Money Laundering Matters.

(a) Since the Look-Back Date, none of APLD, its officers, directors or employees, or to the Knowledge of APLD, any of its agents or representatives:

(i) has used any funds of APLD for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;

(ii) has paid, offered or promised to make, or authorized the payment or giving of money, or anything else of value, to any (1) executive, official, employee or person acting in an official capacity for or on behalf of a government department, government agency or a government-controlled entity or a public international organization (e.g., the International Monetary Fund or the World Bank), (2) Government Official, or (3) any other Person, in each case, while knowing or believing that all or some portion of the money or value will be paid, offered, given or promised to a Government Official or other Person for the purposes of improperly obtaining or retaining business or securing any improper advantage or in other circumstances and, in each case, when such offer, payment or promise would be unlawful;

(iii) has taken any action in violation of applicable Anti-Corruption Laws;

(iv) has participated in any transaction or business dealing with any Sanctioned Person or in any Sanctioned Country in violation of any Sanctions, or otherwise engaged in any activity, practice or conduct in violation of any Sanctions, export or import control Laws, or applicable Anti-Money Laundering Laws;

(v) is a Sanctioned Person, or acting for or on behalf of a Sanctioned Person; or

(vi) is or has been subject to any investigation, voluntary disclosure, prosecution or enforcement action by any Governmental Authority related to, or has received any written communication from a Governmental Authority indicating or alleging that it is or may be in violation of, or may be subject to any investigation or inquiry related to, any actual or alleged breach of any Anti-Corruption Law, Anti-Money Laundering Law, or Sanctions.

(b) Since the Look-Back Date, APLD has instituted and maintained or been subject to policies and procedures, and a system of internal controls, reasonably designed to ensure continued compliance with applicable Anti-Corruption Laws, including those for the detection, prevention and reporting of violations.

3.5 No Finder's Fees. No member of the APLD Group (other than the Group Companies) has any liability or obligation to pay any fees or commissions to any broker, finder, agent or similar advisor with respect to Transactions except for the advisors listed in Section 3.5 of the Disclosure Schedule (the fees and expenses of which will be paid solely by APLD without using any asset or cash of, or obligation or liability to, the Group Companies)

3.6 Outstanding Shares. The total number of outstanding shares of APLD's common stock, par value \$0.001, is 222,903,471, calculated as of the end of the trading day immediately preceding the Effective Date.

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4. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Issuer as follows:

4.1 Authorization. The execution, delivery and performance by the Purchaser of this Agreement and each of the other Transaction Agreements to which the Purchaser is or will be a party, and the consummation by the Purchaser of the Transactions have been, or will be when executed and delivered, duly and validly authorized by all necessary actions, and no other proceedings or actions on the part of the Purchaser are necessary to authorize entering into this Agreement or any other Transaction Agreements executed and delivered concurrently herewith to which the Purchaser is a party or to consummate the Transactions. Each of this Agreement and each of the other Transaction Agreements to which the Purchaser is or will be a party has been, or will be when executed and delivered, duly executed and delivered by the Purchaser and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes, or will constitute when executed and delivered, a valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms and conditions, subject to the Enforceability Exceptions.

4.2 Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Issuer, which by the Purchaser's execution of this Agreement the Purchaser hereby confirms, that the Subject Units to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any direct participation in, or otherwise distributing the same (excluding, for the avoidance of doubt, any transfers or assignments by the Purchaser to its Related Party Transferees). By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Subject Units (excluding, for the avoidance of doubt, any transfers or assignments by the Purchaser to its Related Party Transferees).

4.3 Non-Contravention. The execution and delivery of this Agreement and any other Transaction Agreements to which the Purchaser is a party, and the consummation of the Transactions, do not and will not conflict with, contravene, violate, result in a breach of or constitute a default under (with or without the giving of notice or the lapse of time or both), result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel, or require any notice or Consent under, or result in the imposition of any Encumbrance upon any of the assets of the Purchaser under, (i) any Laws or Orders to which the Purchaser is subject or (ii) any provision of the Purchaser's Governing Documents, except in each case of clause (i), where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, failure to give notice or obtain Consent or the Encumbrance would not reasonably be expected, individually or in the aggregate, to materially impair or delay the ability of the Purchaser to perform its obligations hereunder.

4.4 Disclosure of Information; Non-Reliance. The Purchaser is not relying upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Issuer or any other Person, except as expressly set forth in this Agreement (as qualified by the Disclosure Schedule), the Transaction Agreements and any certificate delivered in connection therewith. Without limiting the generality of the foregoing, the Purchaser acknowledges that neither the Issuer nor any other Person has made or makes, and the Purchaser is not relying upon, any representation or warranty whatsoever to the Purchaser with respect to the Transactions, whether express or implied, except as expressly set forth in this Agreement (as qualified by the Disclosure Schedule), the Transaction Agreements and any certificate delivered in connection therewith. The Purchaser acknowledges, on behalf of itself and its representatives, that neither the Issuer nor APLD makes any representation or warranty to the Purchaser or any other Person with respect to any financial projection or forecast relating to the Issuer or the Business, except as otherwise expressly provided in this Agreement (as qualified by the Disclosure Schedule), the Transaction Agreements and any certificate delivered in connection therewith.

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4.5 Restricted Securities. The Purchaser understands that the Subject Units have not been, and the Issuer has made no assurances that the Subject Units will be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Subject Units are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these Laws, the Purchaser may be required hold the Subject Units indefinitely and the Purchaser may be required to continue to bear the economic risk of complete loss of investment in the Subject Units unless and until they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Issuer has no obligation to register or qualify the Subject Units for resale under this Agreement. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Subject Units, and on requirements relating to the Issuer which are outside of the Purchaser's control, and which the Issuer may not be able to satisfy.



4.6 No Public Market. The Purchaser understands that no public market now exists for the Subject Units, and that the Issuer has made no assurances that a public market will ever exist for the Subject Units.

4.7 Accredited Investor. The Purchaser is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act. The Purchaser has such knowledge and experience in financial and business matters such that the Purchaser is capable of evaluating the merits and risks of the acquisition of the Subject Units and an investment in the Issuer. The Purchaser is not subject to any of the “Bad Actor” disqualifications described in Securities Act Rule 506(d)(1), subsections (i) through (viii).

4.8 No General Solicitation. Neither the Purchaser, nor any of its officers, managers, employees, agents or members acting on its behalf, has, either directly or indirectly, including through a broker or finder, (a) engaged in any general solicitation or (b) published any advertisement in connection with the offer and sale of the Subject Units.

4.9 No Finder’s Fee. The Purchaser has any liability or obligation to pay any fees or commissions to any broker, finder, agent or similar advisor with respect to Transactions.

## 5. Covenants.

5.1 Interim Operating Covenants. During the period beginning on the Effective Date and ending upon (and including) the earlier of (x) the Closing Date and (y) the date of termination of this Agreement pursuant to and in accordance with Section 6.1 (the “Interim Period”), except (i) as required by applicable Laws (or any Order issued by any Governmental Authority), (ii) as expressly permitted under this Agreement, including the Pre-Closing Restructuring Plan in the Agreed Form, or (iii) with the prior written consent of the Purchaser, which consent, solely in the case of clause (a) below, shall not be unreasonably withheld, conditioned or delayed:

(a) the Issuer and APLD shall, and shall cause their respective Affiliates (including any member of the APLD Group, to the extent related to the Business) to, conduct the Business and use the HPC Assets in the Ordinary Course of Business and use their respective reasonable best efforts to (A) preserve in all material respects the goodwill, reputation and present relationships with suppliers, customers, Governmental Authorities and others having significant business relationships with the Business, the Issuer or any of the Subsidiaries of the Issuer; (B) maintain their businesses, assets (including, for the avoidance of doubt, the HPC Assets) and properties (including, for the avoidance of doubt, the ELN Campus) in substantially the same condition as they exist as of the date of this Agreement (ordinary wear and tear excepted); (C) maintain and renew in the Ordinary Course of Business all applicable Insurance Policies (or obtain replacement or substitute insurance policies providing substantially similar coverage) and Material Permits; (D) keep available the services of its applicable key employees consistently with past practice; and (E) operate the Business and use the HPC Assets in compliance with applicable Laws; and

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(b) neither the Issuer nor APLD shall, and shall cause their Affiliates not to, take any action, or agree, resolve or commit to take any action set forth on Schedule 3 hereto.

5.2 ELN-A Lease. The Issuer shall keep the Purchaser reasonably informed with respect to the negotiations and drafts of the ELN-A Lease on a current basis and shall consider in good faith any reasonable comments from the Purchaser regarding the same. The Issuer shall deliver to the Purchaser a final draft of the ELN-A Lease no later than five (5) Business Days prior to execution thereof. If, prior to the end of such five (5) Business Day period, the Purchaser does not provide written notice to the Issuer stating whether or not the Purchaser consents to the entry into the ELN-A Lease, the Purchaser shall be deemed to have rejected the ELN-A Lease, and either the Purchaser, on the one hand, or the Issuer, on the other hand, may terminate the Agreement in accordance with Section 6.1(c). Prior to termination of this Agreement, the Issuer shall not, and APLD and the Issuer shall cause their respective Affiliates to not, execute the ELN-A Lease without the prior written consent of the Purchaser. For the avoidance of doubt, subject to the Issuer’s compliance with the foregoing, the failure to execute the ELN-A Lease shall not, in and of itself, be deemed a breach of this Agreement, or of any of the terms or covenants contained herein, by the Issuer or APLD, and will not result in any liability of, the Issuer or APLD.

## 5.3 [Reserved]

5.4 Regulatory Efforts. The Purchaser, on the one hand, and the Issuer and APLD, on the other hand, shall, at its sole cost and expense, use their respective reasonable best efforts to (i) take (or cause to be taken) all actions; (ii) do (or cause to be done) all things; and (iii) assist and cooperate with the other Parties in doing (or causing to be done) all things, in each case as are necessary, proper or advisable pursuant to applicable Law or otherwise to consummate and make effective, as promptly as reasonably practicable, the Transactions, including by (I) obtaining all Consents, waivers, approvals, orders and authorizations from Governmental Authorities;

and (II) making all registrations, declarations and filings with Governmental Authorities, in each case that are necessary or advisable to consummate the Transactions; provided, that, notwithstanding anything in this Section 5.4 or any other provision of this Agreement, nothing in this Agreement (including this Section 5.4) will require the Purchaser or any of its Related Party Transferees to effect, agree to or otherwise be required to, take any Regulatory Remedy with respect to any Person (including MGL and any Investment Funds or Fund Vehicles affiliated with, or managed or advised by, MGL, any investment, or any portfolio company (as such term is commonly understood in the private equity industry) or investment of MGL or of any such Investment Fund or Fund Vehicle), after taking effect of or as a condition to consummating the Transactions.

5.5 Post-Closing Policies. The Issuer shall, with the prior written consent of the Purchaser, enact certain environmental, health & safety and social policies (in each case, to be implemented within ninety (90) days of Closing) in form and substance reasonably acceptable to the Purchaser, which shall include comprehensive safety planning, a net-zero plan, and other customary provisions (the "Approved Policies"). Unless otherwise set forth in the Second A&R LLC Agreement (if and when executed and delivered by the parties thereto), any HPC Assets held by a member of the APLD Group shall be managed in accordance with the Approved Policies until the earlier of such time that (i) the Purchaser breaches a material covenant contained in this Agreement or any of the Transaction Agreements in any material respect (subject to applicable notice and cure periods set forth herein or therein) and (ii) the Purchaser no longer owns at least 50% of the Purchased Units, provided, that the APLD Group's (other than the Group Companies) obligations under this Section 5.5 shall in all events expire thirty (30) months following the Closing.

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#### 5.6 Access to Information; Confidentiality.

(a) Subject to Section 5.6(b), during the Interim Period, the Issuer and APLD shall, and shall cause the Group Companies and the APLD Group, solely to the extent related to the Business, to, (i) provide the Purchaser and its Representatives with reasonable access during normal business hours to the properties, assets, books and records relating to the Group Companies and the Business as the Purchaser or its Representatives shall reasonably request from time to time; (ii) subject to applicable Law, furnish or make available to the Purchaser and its Representatives such financial and operating data and such other information concerning the business, properties, Contracts, assets, liabilities and personnel of the Group Companies and the Business as either the Purchaser or its Representatives may reasonably request from time to time; (iii) instruct the employees, counsel and financial advisors of the Group Companies and of the Business to reasonably cooperate with the Purchaser in its investigation of the Group Companies and the Business; and (iv) provide the Purchaser, on a case-by-case basis, with any material updates in respect of developments and/or new opportunities in respect of the HPC Segment and the HPC Assets (including the Specified Properties); provided, that the exercise of the foregoing shall right shall at all times be subject to compliance with Law if such Group Company reasonably believes that the information requested by the Purchaser or its Representatives is subject to confidentiality obligations to third parties in effect as of the Effective Date or the disclosure of such information would result in the loss of attorney-client privilege or subject each Group Company to the risk of liability; provided, further, that in the exercise of the foregoing rights, the Purchaser shall not, and shall cause its Representatives not to, unduly interfere with the operation and conduct of the Business. If any material is withheld by any Group Company or any member of the APLD Group pursuant to the preceding sentence, the Issuer shall give notice to the Purchaser as to the general nature of what is being withheld and use reasonable best efforts to find alternative ways to disclose the applicable information without violating such agreement, privilege or Law. Notwithstanding anything to the contrary set forth herein, nothing in this Agreement shall limit the Purchaser or its Affiliates' rights to seek discovery as permitted by any court of competent jurisdiction in connection with any Legal Proceedings commenced under the terms of this Agreement.

(b) The terms of the Confidentiality Agreement are incorporated into this Agreement by reference and shall continue in full force and effect (and all obligations thereunder shall be binding upon the Purchaser as if parties thereto) until the Closing, at which time the Confidentiality Agreement shall terminate; provided, that the Purchaser and its Affiliates and their respective Representatives shall be permitted to disclose Confidential Information (as defined in the Confidentiality Agreement): (i) which, at the time of its use or disclosure is, through no fault of the Purchaser or its Affiliates or their respective Representatives in violation of the terms hereof or any other obligation of confident with respect to such Person, part of the public domain by publication or otherwise; (ii) which is required or requested to be disclosed by such Person pursuant to applicable Law or Order or Governmental Authority, in which case, such Person must give written notice to the other Parties prior to any such disclosure to the extent permitted by Law (provided, that no such notice shall be required if such disclosure is a result of a customary regulatory audit or request or requirement from a bank examiner, regulatory authority or self-regulatory authority in the Ordinary Course of a broad based examination or inspection not specific to the Transactions); (iii) to any direct or indirect lender, financing source, insurer, limited partners, shareholders or existing or prospective investors who have a need to know, in each case to the extent such recipients are bound by a duty of confidentiality with respect to such Confidential Information; and (iv) to which the other Parties have given prior written approval to the disclosure or use. If for any reason the Closing does not occur, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms.

5.7 Publicity. The Parties shall not, and shall cause each of their respective Affiliates and Representatives not to, from and after the Effective Date, issue, give, make or otherwise disseminate any press release, public notice, public announcement or other publicity concerning the Transaction Agreements or the Transaction without the prior written approval of the other Party, except as such release, notice, disclosure or other publicity (i) contains only information that has already been disclosed in any other press release or public statement issued or made in accordance with this Section 5.7 or (ii) is required by applicable Laws or the rules or regulations of any United States or foreign securities exchange or automated quotation system upon which the securities of the Party required to make such disclosure (or its Affiliates) are listed, in which case the Person required to make the release, notice, disclosure or other publicity shall (if not prohibited by applicable Laws and to the extent practicable), solely as it relates to information that has not already been disclosed, allow the other Party reasonable time to comment on such release, notice, disclosure or other publicity in advance of such issuance and shall consider all reasonable and timely comments submitted by the other Party.

5.8 Tax Treatment. Within sixty days (60) following the Closing, APLD shall provide the Purchaser with a draft written allocation (the “Proposed Allocation”) of (x) the portion of the Purchase Price treated as allocable to the Common Stock Purchase Warrants and (y) the portion of the Purchase Price (and any other amounts treated as such consideration for federal income Tax purposes) treated as consideration for the purchase of assets from APLD and the allocation of such amount among the assets deemed purchased, prepared in accordance with the rules under Section 1060 of the Code and the Treasury Regulations promulgated thereunder. If the Purchaser does not provide written notice of any objections, specifying such objections in reasonable detail, with fifteen (15) days of receipt of the Proposed Allocation, then the allocation proposed by APLD shall be final. If the Purchaser does provide timely notice of objection to the Proposed Allocation, then APLD and the Purchaser shall negotiate in good faith to resolve such objections. Each member of the APLD Group and the Group Companies and the Purchaser shall report for Tax purposes in a manner consistent with the allocation as finalized under this Section 5.8 (unless otherwise required pursuant to a final “determination” as defined in Section 1313 of the Code).

5.9 Tax Cooperation. Each of APLD, the Issuer and the Purchaser shall, and shall cause their respective Subsidiaries to, cooperate fully, as and to the extent reasonably requested by the other party, in connection with any Tax matters relating to the Issuer and its Subsidiaries (including by the provision of reasonably relevant records or information). The party requesting such cooperation will pay the reasonable out-of-pocket expenses of the other party.

5.10 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes, including any penalties and interest thereon, incurred in connection with this Agreement (“Transfer Taxes”) shall be borne and paid by the Issuer, including with respect to the consummation of the Transactions; provided, that all Transfer Taxes incurred in connection with or relating to the Pre-Closing Restructuring shall be borne and paid by APLD pursuant to Section 5.12(d) hereof. The Purchaser and the Issuer shall reasonably cooperate in the preparation and filing of any Tax Returns or other documentation with respect to any Transfer Taxes. If required by applicable Law, the Parties shall, and shall cause their Affiliates to, join in the execution of any such Tax Returns and other documentation. The Purchaser and the Issuer shall reasonably cooperate to mitigate the effects of Transfer Taxes.

5.11 R&W Policy. Prior to the Closing, the Purchaser shall use reasonable best efforts to obtain a stand-alone representation and warranty insurance policy (the “R&W Policy”) that insures, in accordance with its terms, the Purchaser and its Affiliates and Representatives (as applicable) for Losses deriving from a breach, or any failure to be true, of the representations and warranties given by the Issuer and APLD, as applicable, to the Purchaser under this Agreement and, if available, the APLD Closing Certificate or the Issuer Closing Certificate; provided, that, in no event shall the Purchaser be required to expend for the R&W Policy an aggregate premium in excess of Three Million Dollars (\$3,000,000). The Purchaser shall keep the Issuer reasonably informed of its efforts to obtain the R&W Policy and shall provide the Issuer with an opportunity to review and comment on drafts of the R&W Policy prior to binding such policy. Should the Purchaser procure the R&W Policy, (i) such R&W Policy shall be at the Purchaser’s sole cost and expense, including all applicable premiums and associated fees and taxes for the R&W Policy, and (ii) the Purchaser shall cause the R&W Policy to expressly provide that the insurer thereunder waives, and agrees not to pursue, directly or indirectly, any subrogation rights, claims of contribution, or rights acquired by assignment or otherwise against the Issuer and APLD or any of their respective direct or indirect equity holders, controlling Persons, members, directors, officers, employees, Affiliates, general or limited partners, or Representatives with respect to any claim made by an insured thereunder, except in the event of Fraud, but then only against the Person that committed such Fraud. The Purchaser, its Affiliates, and its Representatives shall not amend, waive or otherwise modify any such subrogation provision or, in a manner adversely affecting the Issuer, APLD, their respective Affiliates and Representatives, any other provisions of any R&W Policy, without the express written consent of the Issuer.

## 5.12 Pre-Closing Restructuring.

(a) The Issuer and APLD shall effectuate and cause their respective Affiliates to take all actions as are necessary to effectuate the Pre-Closing Restructuring pursuant to the Pre-Closing Restructuring Plan in the Agreed Form as soon as reasonably practicable (and, in any event, prior to the Closing) and in accordance with applicable Law and the Governing Documents of the foregoing Persons. Neither the Issuer or APLD shall make any changes or modifications to the Pre-Closing Restructuring Plan without the prior written consent of the Purchaser, with such consent not to be unreasonably withheld, conditioned or delayed, solely to the extent such changes or modifications are reasonably expected to have an adverse effect on the Purchaser. The Issuer and APLD shall keep the Purchaser reasonably informed of the status of the Pre-Closing Restructuring and provide the Purchaser and its advisors with a reasonable opportunity (and, in any event, no fewer than five (5) Business Days prior to the consummation of the Pre-Closing Restructuring) to review all Contracts and other documents (including, for the avoidance of doubt, all Governing Documents of APLD Holdings and the Issuer and its Subsidiaries) to be executed or adopted in connection with the Pre-Closing Restructuring (the “Pre-Closing Restructuring Documents”). APLD and the Issuer shall cause its counsel to consider in good faith any reasonable comments of the Purchaser’s counsel thereto.

(b) As part of the Pre-Closing Restructuring, and in each case in accordance with the terms of the Pre-Closing Restructuring Plan, prior to the Closing, the Issuer and APLD shall, and shall cause their respective Affiliates and Subsidiaries to, take or cause to be taken all actions, or do or cause to be done, and assist and cooperate with all other Parties in doing, all things reasonably necessary, proper or advisable to:

(i) transfer, assign or convey (A) any assets owned or held by the Group Companies that would constitute Retained Business Assets or (B) any liabilities or obligations of the Group Companies that constitute Retained Business Liabilities, in each case, to APLD or another member of the APLD Group (excluding, for the avoidance of doubt, any Group Company) such that, as of the Closing, (x) the assets owned or held by the Group Companies do not include any Retained Business Assets and (y) the liabilities and obligations of the Group Companies do not include any Retained Business Liabilities; provided, that prior to any such transfer, assignment or conveyance, the Issuer and APLD shall deliver written notice thereof to the Purchaser (which notice shall include a reasonably detailed description of each Retained Business Asset and Retained Business Liability proposed to be so transferred, assigned or conveyed) for the Purchaser’s review; and

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(ii) transfer, assign or convey the Specified HPC Assets to the Issuer or another Group Company at no additional cost such that, as of the Closing, the Group Companies have good and valid title to, or otherwise have the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement, all of the Specified HPC Assets, in each case free and clear of any Encumbrances, except for Permitted Encumbrances.

Notwithstanding the foregoing, in the event the Issuer or APLD fails to take all actions contemplated by Section 5.12(b) as are necessary to effectuate the Pre-Closing Restructuring (the “Pre-Closing Restructuring Transfers”) prior to the Closing, unless waived in writing by the Purchaser, each of the Issuer and APLD acknowledges and agrees that it shall, upon written request of the Purchaser, continue to complete the Pre-Closing Restructuring in accordance with the terms of this Section 5.12(b).

(c) In the event that, following the Closing, the Purchaser, the Issuer or APLD discovers or becomes aware that:

(i) a Group Company is identified by the Purchaser to be subject to a Retained Business Liability (provided, that if APLD disagrees with such identification by the Purchaser, the Parties shall attempt to resolve such dispute in good faith for 30 days and, thereafter, the dispute shall be resolved in accordance with Section 7.4), (A) the Issuer shall, or shall cause the applicable Group Company to, return or transfer and convey (without further consideration) to APLD or the applicable member of the APLD Group, as applicable, and APLD shall, or shall cause such member of the APLD Group to, accept or assume such Retained Business Liability, as applicable (provided, that prior to any such return or transfer and conveyance, the Issuer and APLD shall deliver written notice thereof to the Purchaser (which notice shall include a reasonably detailed description of each Retained Business Liability proposed to be so returned or transferred and conveyed) for the Purchaser’s review); and (B) the Issuer shall, or shall cause the applicable Group Company to, and APLD shall, or shall cause the applicable member of the APLD Group to, execute such documents or instruments of conveyance or assumption and take such further acts which are reasonably necessary to effect the transfer of such Retained Business Liability to APLD or such member of the APLD Group, in each case, such that each Party is put into substantially the same economic position as if such action had been taken on or prior to the Closing Date; and

(ii) any asset held by APLD or any member of the APLD Group is ultimately identified by the Purchaser to be a Specified HPC Asset (provided, that if APLD disagrees with such identification by the Purchaser, the Parties shall attempt to resolve such dispute in good faith for 30 days and, thereafter, the dispute shall be resolved in accordance with Section 7.4), (A) APLD shall, or shall cause its applicable Affiliates to, return or transfer and convey (without further consideration) to the Issuer or the applicable Group Company, and the Issuer shall, or shall cause the applicable Group Company to, accept or assume such HPC Asset; and (B) the Issuer shall, or shall cause the applicable Group Company to, and APLD shall, or shall cause the applicable member of the APLD Group to, execute such documents or instruments of conveyance or assumption and take such further acts which are reasonably necessary to effect the transfer of such HPC Asset to the Issuer or the applicable Group Company, in each case, such that each party is put into substantially the same economic position as if such action had been taken on or prior to the Closing Date.

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(d) Any and all fees, costs and expenses (including Taxes) arising out of or related to the Pre-Closing Restructuring (“Pre-Closing Restructuring Expenses”), including for the avoidance of doubt the Pre-Closing Restructuring Transfers, or otherwise arising out of or related to Section 5.12(c), shall be borne and paid by APLD without using any asset or cash of, or obligation or liability to, the Group Companies.

(e) Issuer shall use its commercially reasonable efforts to have employed or otherwise engaged the Specified Employees on terms reasonably satisfactory to the Purchaser within sixty (60) days following the Effective Date, unless otherwise consented to in writing by Purchaser (such consent, not to be unreasonably withheld, conditioned or delayed).

5.13 Transaction Proceedings. From and after the Effective Date, the Issuer and APLD, on the one hand, and the Purchaser, on the other hand, shall promptly advise the other Parties in writing of any Legal Proceedings (including derivative claims) commenced or threatened in writing or against any such Party or any of their respective Affiliates, or any director, manager or officer of any of the foregoing relating to this Agreement, the Pre-Closing Restructuring and/or the transactions contemplated by this Agreement or any Transaction Agreement (any such Legal Proceedings, “Transaction Proceedings”) and shall keep the other Parties promptly and reasonably informed on a current basis regarding any such Transaction Proceedings (including by promptly furnishing to the other Parties and their advisors such information relating to such Transaction Proceedings as such Persons may reasonably request). The Issuer and APLD, on the one hand, and the Purchaser, on the other hand, shall give due consideration to the other Parties’ views with respect thereto.

#### 5.14 Debt Repayment; APLD Distributions.

(a) At or prior to the Closing, the Issuer shall deliver to the Purchaser the Debt Repayment Documentation, including the Debt Payoff Letters, and an IRS Form W-9 or applicable IRS Form W-8 for each applicable payee to the extent the Issuer was required to collect such form.

(b) At Closing, the Issuer shall, to the extent available, from any combination of proceeds pursuant to Section 1.3(d), Construction Financing proceeds or cash on hand, make the APLD Closing Distribution pursuant to the terms of this Agreement; provided, however, that the Issuer shall reasonably consult with the Purchaser prior to determining the amount of such APLD Closing Distribution (and no later than three (3) Business Days prior to Closing). Notwithstanding the foregoing, if the amount of cash on hand at Closing is insufficient to make the APLD Closing Distribution at such time, the Issuer shall make the APLD Closing Distribution at Closing to the extent of such cash on hand, and the balance thereof as soon as reasonably practicable thereafter in priority to any other distributions.

5.15 No Shop. During the Interim Period, the Issuer and APLD shall not, and shall cause their Affiliates and its and their respective Representatives not to, directly or indirectly (i) solicit, initiate or knowingly encourage, or knowingly take other action intended to facilitate, any Competing Transaction or any inquiries or the making of any proposal that constitutes or would reasonably be expected to lead to a Competing Transaction or (ii) enter into, continue or otherwise participate in any discussions with respect to pricing or negotiations regarding, or furnish to any Person any non-public information with respect to, any Competing Transaction. During the Interim Period, the Issuer and APLD shall promptly notify the Purchaser in writing if any Person makes any proposal, offer, inquiry or contact with respect to any Competing Transaction and shall provide the Purchaser with the material terms thereof.

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5.16 Termination of Affiliate Transactions. Unless otherwise agreed to in writing by the Purchaser, at or prior to Closing, APLD shall, and shall cause its Affiliates to, take any and all actions necessary to settle, discharge, eliminate or terminate in full any and all Affiliate Transactions (other than the Permitted Affiliate Transactions) without any liability or obligation to the Group Companies or the Business.

5.17 Pre-Closing Actions.

(a) From and after the Effective Date, the Issuer, APLD and the Purchaser shall use reasonable best efforts to negotiate in good faith and mutually agree upon, by 11:59 p.m., New York time on February 15, 2025, the final form of each of;

(i) the Second A&R LLC Agreement;

(ii) the Management Aggregator LLCA;

(iii) the Pre-Closing Restructuring Plan; and

(iv) the Corporate Services Agreement, including all schedules and exhibits thereto, as applicable.

(b) Upon the completion and mutual agreement of each of the items described in clauses (i) – (iv) above, each of the Parties will execute and deliver a written acknowledgement that the applicable document is in final form and on mutually agreeable terms, with a copy of such final form document annexed thereto (each such document, an “Agreed Form”, and each written notice, a “Satisfaction Notice” and collectively, the “Satisfaction Notices”).

5.18 Further Assurances. From and after the Effective Date (including, for the avoidance of doubt, following the Closing) the Issuer, APLD and the Purchaser shall, and shall cause its Affiliates to, from time to time, execute and deliver such instruments, documents, conveyances or assurances and take such other actions as shall be necessary under the terms of this Agreement, or otherwise reasonably requested by the Issuer, APLD or the Purchaser (as applicable), including, but not limited to, all actions necessary to satisfy the obligations required under Section 1.3(b), to confirm and assure the rights and obligations provided for in this Agreement and render effective the consummation of the transactions contemplated hereby. In furtherance of the foregoing, the Issuer and APLD shall, and shall cause their Affiliates to, use their reasonable best efforts to obtain the approvals, Consents and waivers that are listed on Section 1.3(b)(v) of the Disclosure Schedule. APLD shall bear all costs and expenses arising from obtaining such requisite approvals, Consents or waivers, it being agreed that any such costs and expenses shall not be deemed to be Issuer Transaction Expenses for purposes of this Agreement. Following the Closing, to the extent any of the transfers, conveyances, deliveries or assumptions required to be made pursuant to this Agreement shall not have been consummated at or prior to the Closing, the Purchaser, on the one hand, and APLD and Issuer, on the other hand, shall use their respective reasonable best efforts to effect such consummation as promptly thereafter as reasonably practicable.

6. Termination.

6.1 Termination. This Agreement may be terminated and the Transaction may be abandoned at any time prior to the Closing:

(a) by mutual written consent of the Issuer and the Purchaser;

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(b) by written notice from either the Issuer or the Purchaser if any Governmental Authority with lawful jurisdiction shall have issued an Order or taken any other final action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by the Transaction Agreements and such Order or other action is or shall have become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 6.1(b) shall not be available to any Party if such Party’s or its Affiliate’s breach or failure to fulfill any obligation under this Agreement, or their act or omission, has been the primary cause of, or has resulted in, the issuance of such Order or action;

(c) by written notice from either the Issuer or the Purchaser if, in accordance with Section 5.2, the Purchaser either rejects, or is deemed to have rejected, the ELN-A Lease;

(d) by written notice to the Purchaser from the Issuer, if the Purchaser has breached or failed to perform any of its covenants or other agreements contained in this Agreement, or is in breach of any representation or warranty set forth in Section 4, which such breach or failure to perform (i) would result in a failure of a condition set forth in Section 1.3(a) or Section 1.3(c) and (ii) cannot be

cured by the Outside Date (or, if capable of being cured, is not cured prior to the earlier of (A) thirty (30) Business Days after the Issuer provides written notice of such breach to the breaching Party and (B) five (5) Business Days prior to the Outside Date); provided, that the right to terminate this Agreement pursuant to this Section 6.1(d) shall not be available if the Issuer or APLD is then in material breach or willful breach (after giving effect to any cure thereof prior to the purported termination) of any representation, warranty, covenant or other agreement contained in this Agreement and such breach would result in a failure of a condition set forth in Section 1.3(a) or Section 1.3(b);

(e) by written notice to the Issuer from the Purchaser, if the Issuer or APLD has breached or failed to perform any of its respective covenants or other agreements contained in this Agreement, or is in breach of any representation or warranty set forth in Section 2 or Section 3, as applicable, which such breach or failure to perform (A) would result in a failure of a condition set forth in Section 1.3(a) or Section 1.3(b) and (B) cannot be cured by the Outside Date (or, if capable of being cured, is not cured prior to the earlier of (x) thirty (30) Business Days after the Purchaser provides written notice of such breach to the Issuer and (y) five (5) Business Days prior to the Outside Date); provided, that the right to terminate this Agreement pursuant to this Section 6.1(e) shall not be available to the Purchaser if the Purchaser is then in material breach or willful breach (after giving effect to any cure thereof prior to the purported termination) of any representation, warranty, covenant or other agreement contained in this Agreement and such breach would result in a failure of a condition set forth in Section 1.3(a) or Section 1.3(c);

(f) by either the Purchaser or the Issuer, upon delivery of written notice at any time prior to the Closing if the Closing has not occurred by 11:59 p.m., New York time, on July 13, 2025 (the "Outside Date"); provided, that the right to terminate this Agreement pursuant to this Section 6.1(f) will not be available to a Party if the failure of the Closing to be consummated prior to the Outside Date was primarily due to, or primarily caused by, the failure of such Party or its Affiliate to perform any of its obligations under this Agreement; provided, that if at such time and date all conditions set forth in Section 1.3(a), Section 1.3(b) and Section 1.3(c) have been satisfied or waived other than (A) those conditions that by their nature are to be satisfied at the Closing, provided that such conditions are reasonably expected to be satisfied at the Closing and (B) the conditions set forth in Section 1.3(b)(iv) or Section 1.3(b)(ix)(4), then the Outside Date may, at the sole election of the Purchaser and upon written notice to the Issuer, be extended an additional sixty (60) days to a date that is in the aggregate two hundred forty (240) days from the Effective Date; provided, further, that if at such time and date all conditions set forth in Section 1.3(a), Section 1.3(b) and Section 1.3(c) have been satisfied or waived other than (A) those conditions that by their nature are to be satisfied at the Closing, provided that such conditions are reasonably expected to be satisfied at the Closing and (B) the conditions set forth in Section 1.3(b)(ix)(4), then the Outside Date may, at the sole election of the Issuer and upon written notice to the Purchaser, be extended an additional sixty (60) days to a date that is in the aggregate two hundred forty (240) days from the Effective Date;

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(g) by the Issuer, upon written notice to the Purchaser at any time after the third (3<sup>rd</sup>) Business Day immediately following the date on which Closing is required to occur pursuant to Section 1.2(a), if (i) all of the conditions set forth in Section 1.3(a) and Section 1.3(b) have been satisfied (other than those conditions which by their terms are reasonably expected to be satisfied by delivery of documents or taking of any other action at the Closing by any Party, each of which shall be capable at the time of termination of being satisfied if the Closing were to occur at such time), (ii) the Issuer shall have provided the Purchaser with written notice stating that the Issuer is ready, willing and able to consummate the Closing, (iii) the Purchaser fails to consummate the Closing before 5:00 p.m., New York time on the third (3<sup>rd</sup>) Business Day following the date of the Issuer's receipt of such notice, and (iv) on such third (3<sup>rd</sup>) Business Day, the Issuer stood ready and willing to consummate the Closing;

(h) by the Purchaser, upon written notice to the Issuer at any time after the third (3<sup>rd</sup>) Business Day immediately following the date on which Closing is required to occur pursuant to Section 1.2(a), if (i) all of the conditions set forth in Section 1.3(a) and Section 1.3(c) have been satisfied (other than those conditions which by their terms are reasonably expected to be satisfied by delivery of documents or taking of any other action at the Closing by any Party, each of which shall be capable at the time of termination of being satisfied if the Closing were to occur at such time), (ii) the Purchaser shall have provided the Issuer with written notice stating that the Purchaser is ready, willing and able to consummate the Closing, (iii) the Issuer fails to consummate the Closing before 5:00 p.m., New York time on the third (3<sup>rd</sup>) Business Day following the date of the Issuer's receipt of such notice, and (iv) on the third (3<sup>rd</sup>) Business Day, the Purchaser stood ready and willing to consummate the Closing; or

(i) by either the Purchaser or the Issuer, upon delivery of written notice to the other Parties, at any time after 11:59 p.m., New York time on February 15, 2025, if the Satisfaction Notices have not been duly given in accordance with Section 5.17.

6.2 Effect of Termination. Subject to Section 6.3, in the event that this Agreement is validly terminated pursuant to Section 6.1, all rights and obligations of the Issuer, APLD, the Purchaser, and the Issuer Related Persons (as defined in the Equity Commitment Letter) hereunder shall terminate, and this Agreement shall become null and void and have no further force or effect, except with respect to the provisions of this Section 6.2 (*Effect of Termination*), Section 5.6(b) (*Access to Information; Confidentiality*), Section 6.3 (*Termination Fee*), Section 7.3 (*Successors and Assigns; No Third Party Beneficiaries*), Section 7.4 (*Governing Law*), Section 7.5 (*Waiver of Jury Trial*), Section 7.9 (*Notices*) and Section 7.13 (*Expenses*), which shall remain operative and in full force and effect as between the Issuer, APLD and the Purchaser, unless the Issuer, APLD and the Purchaser execute a writing that expressly (with specific references to Sections or subsections of this Agreement) terminates such rights and obligations as between the Issuer, APLD and the Purchaser, and no Party shall have any liability to any other Party, except that, subject to Section 6.3, nothing herein will relieve any Party from liability for (i) any breach of any representation, warranty, agreement or covenant contained herein which occurred prior to such valid termination and (ii) Fraud. Any written notice terminating this Agreement pursuant to Section 6.1 shall specify the reason for such termination and the effective date of such termination (which shall be no earlier than the date such notice is delivered). If the Transactions are terminated as provided herein, all confidential information (i) received by the Purchaser, its Affiliates or its Representatives with respect to the Group Companies, their Affiliates and the Business and (ii) received by the Group Companies, their Affiliates and their respective Representatives with respect to the Purchaser and its Affiliates, shall otherwise be treated in accordance with the Confidentiality Agreements, which shall remain in full force and effect in accordance with their respective terms, notwithstanding the termination of this Agreement.

### 6.3 Termination Fee.

(a) In the event of (i) termination of this Agreement by the Issuer pursuant to Section 6.1(d) or Section 6.1(g) or (ii) termination of this Agreement pursuant to Section 6.1(f) if at the time of such termination, the Issuer could have validly terminated this Agreement pursuant to Section 6.1(d) or Section 6.1(g), then the Purchaser hereby agrees to pay, or cause to be paid, within fifteen (15) Business Days of termination, to the Issuer, as liquidated damages in connection with any such termination, an aggregate amount equal to \$11,250,000 (the "Termination Fee"), by wire transfer of immediately available funds in U.S. dollars to an account or accounts designated in writing by the Issuer.

(b) The Parties acknowledge that (i) the agreements contained in this Section 6.3 are an integral part of the transactions contemplated by this Agreement, (ii) the damages resulting from termination of this Agreement under circumstances where the Termination Fee is payable are uncertain and incapable of accurate calculation and therefore, the amount payable pursuant to Section 6.3(a) is not a penalty but rather constitutes liquidated damages in a reasonable amount that will compensate the Issuer (including its Affiliates) for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby and (iii) without the agreements contained in this Section 6.3, the Parties would not have entered into this Agreement.

(c) Notwithstanding anything to the contrary set forth in this Agreement, but subject to the right to seek specific performance pursuant to Section 7.6 prior to any termination of this Agreement, the sole and exclusive remedy (whether at Law, in equity, in contract, or in tort, based on fraud or any other theory, for breach, Fraud or otherwise) whether for any and all liabilities, Losses or damages suffered or incurred by the Issuer, APLD and the Issuer Related Persons or otherwise, against the Purchaser or any of the Purchaser's Non-Party Affiliates, in connection with this Agreement (or the actual or purported termination hereof) or any of the transactions contemplated hereby (or the abandonment thereof) or any matter forming the basis of termination of this Agreement or such transactions, the negotiation or execution of this Agreement or the performance or nonperformance or breach of this Agreement, or Fraud, shall be for the Issuer to terminate this Agreement pursuant to Section 6.1 and, to the extent payable, seek payment of any Termination Fee from the Purchaser pursuant to Section 6.3(a). Upon termination of this Agreement in circumstances where no Termination Fee is payable, or upon termination of this Agreement and payment of the Termination Fee, neither the Purchaser nor any of the Purchaser's Non-Party Affiliates shall have any further liability or obligation to the Issuer, APLD and the Issuer Related Persons relating to or arising out of this Agreement or the transactions contemplated hereby (or the termination thereof), except that the following sections shall remain operative and in full force and effect as between the Issuer, APLD and the Purchaser: Section 5.6(b) (*Access to Information; Confidentiality*), Section 7.3 (*Successors and Assigns; No Third Party Beneficiaries*), Section 7.4 (*Governing Law*), Section 7.5 (*Waiver of Jury Trial*), Section 7.9 (*Notices*) and Section 7.13 (*Expenses*). Notwithstanding anything to the contrary, while the Issuer and APLD may pursue both a grant of specific performance prior to termination of this Agreement, and payment of the Termination Fee in the event this Agreement is terminated in circumstances where payable, neither the Issuer nor APLD shall in any circumstances or event be entitled to receive both a grant of specific performance to cause the Closing to occur pursuant to Section 7.6 (or otherwise) and payment of the Termination Fee (or interest or monetary damages of any kind).



7. Miscellaneous.

7.1 Indemnification; Survival; Release.

(a) Subject to the terms and conditions of this Section 7.1, from and after the Closing:

(i) APLD shall indemnify, defend and hold harmless the Purchaser, its Affiliates and Related Party Transferees, and its and their respective officers, directors, managers, employees, agents and other Representatives (the “Purchaser Indemnified Parties”) from and against all Losses incurred or suffered by any Purchaser Indemnified Party to the extent arising or resulting from:

- (1) any breach of any representation or warranty of APLD contained in Section 3 of this Agreement;
- (2) any breach of any covenant, obligation or agreement of APLD contained in this Agreement; or
- (3) any breach of any Issuer Fundamental Representation contained in this Agreement; and

(ii) the Issuer shall indemnify, defend and hold harmless each Purchaser Indemnified Party from and against all Losses incurred or suffered by any Purchaser Indemnified Party to the extent arising or resulting from:

- (1) any breach of any representation or warranty of the Issuer contained in Section 2 of this Agreement (other than the Issuer Fundamental Representations);
- (2) any breach of any covenant, obligation or agreement of the Issuer contained in this Agreement; or
- (3) the Pre-Closing Restructuring, the Pre-Closing Restructuring Transfers, the Pre-Closing Restructuring Expenses, the Retained Business Assets or the Retained Business Liabilities.

(b) Notwithstanding anything in this Agreement to the contrary: (i) the representations and warranties contained in Section 2 and Section 3 of this Agreement shall survive until the date that is eighteen (18) months after the Closing Date, except that the Issuer Fundamental Representations and the APLD Fundamental Representations shall survive until the date that is three (3) years following the Closing Date; and (ii) all obligations and covenants required by this Agreement to be performed or complied with by APLD or the Issuer, as applicable, shall survive until the date that is twelve (12) months after the Closing Date, except that all such obligations and covenants that by their nature are required to be performed following the Closing shall survive in accordance with their terms. Notwithstanding the foregoing, if a Claim Notice is duly given in good faith in accordance with Section 7.1(e) with respect to a claim for a breach of any representation, warranty, covenant or agreement prior to the expiration of the applicable survival period set forth in the foregoing clauses (i) or (ii), the claim with respect to such representation, warranty, covenant or agreement (and such representation, warranty, covenant or agreement solely as to such claim) shall continue and survive until such claim is finally resolved pursuant to this Section 7.1. Notwithstanding anything in this Agreement to the contrary:

(i) Neither APLD or the Issuer shall have any liability pursuant to Sections 7.1(a)(i)(1) or 7.1(a)(ii)(1) (other than liability for a breach of any APLD Fundamental Representation), as applicable, for any Losses until the aggregate amount of all Losses incurred by the Purchaser Indemnified Parties that are subject to indemnification pursuant to Sections 7.1(a)(i)(1) and 7.1(a)(ii)(1) equals or exceeds the Deductible Amount, in which event the Issuer and APLD, as applicable, shall be liable for Losses pursuant to Sections 7.1(a)(i)(1) and 7.1(a)(ii)(1), respectively, only to the extent they are in excess of such Deductible Amount;

(ii) in no event shall APLD’s and the Issuer’s combined aggregate liability pursuant to Sections 7.1(a)(i)(1) and 7.1(a)(ii)(1) (other than with respect to a breach of any Issuer Fundamental Representation or APLD Fundamental Representation), whether based on contract, tort, strict liability, other Laws or otherwise, exceed the Maximum General Indemnification Amount; provided, that the foregoing shall not limit liability of any Loss determined by a court of competent jurisdiction to be based upon Fraud; and

(iii) in no event shall APLD's aggregate liability pursuant to Section 7.1(a)(i)(1) with respect to any breach of any Issuer Fundamental Representation or Section 7.1(a)(ii)(1) with respect to any breach of any APLD Fundamental Representation, whether based on contract, tort, strict liability, other Laws or otherwise, exceed the Maximum Fundamental Indemnification Amount; provided, that the foregoing shall not limit liability of any Loss determined by a court of competent jurisdiction to be based upon Fraud.

(c) For purposes of the indemnification obligations under this Section 7.1, when determining whether there has been an inaccuracy, misrepresentation or breach and when determining the amount of Losses resulting from or arising therefrom, the representations and warranties set forth in Section 2 and Section 3 of this Agreement that are qualified as to "material," "materiality," "material respects," "Material Adverse Effect" or words of similar import or effect (but not the term "Material" in the defined term Material Contract, Material Permit or Material Supplier) shall be deemed to have been made without any such qualification; provided, however, that the foregoing shall not apply in respect of Section 2.14(a)(viii).

(d) Except with respect to claims for Fraud, Losses in respect of claims under Sections 7.1(a)(i)(1), 7.1(a)(i)(3) and 7.1(a)(ii)(1) shall be satisfied in the following order: (i) first, by recourse against the R&W Policy (to the extent the Purchaser has been able to obtain an R&W Policy in accordance with Section 5.11) and (ii) thereafter, if and only if, the Purchaser has used reasonable best efforts to recover such Losses under the R&W Policy (which, for the avoidance of doubt, shall not require the Purchaser to commence any Legal Proceeding), but coverage for such Losses is not available under the R&W Policy as a result of (x) the Losses exceeding the policy limit (and in such event, only to the extent of such excess), (y) any exclusion under, or other coverage limitation of, the R&W Policy, (y) the insurer has denied payment, or (z) the Purchaser has not been able to obtain an R&W Policy in accordance with Section 5.11, then by recourse directly against the Issuer (only for claims under Section 7.1(a)(ii)(1)) or APLD (only for claims under Sections 7.1(a)(i)(1) and 7.1(a)(i)(3)), for any amounts not so recovered under the R&W Policy; provided, however, that the Purchaser shall be solely responsible for paying the retention under the R&W Policy to the extent payable thereunder and neither the Issuer, APLD nor any of their respective Affiliates shall have any liability therefor; provided, however, that (A) clause (i) above shall be deemed to have been satisfied if the Purchaser has made a claim under the R&W Policy and has used reasonable best efforts (which, for the avoidance of doubt, shall not require the Purchaser to commence any Legal Proceeding) to pursue recovery thereunder for the Losses for which such indemnification is sought and the insurer under the R&W Policy has asserted that coverage for such Losses is not available under the R&W Policy as a result of any exclusion under, or coverage limitation of, the R&W Policy or otherwise defined such claim; and (B) the Purchaser shall have no obligation to make any claim under the R&W Policy once the claims period under the R&W Policy has expired or the Purchaser has recovered for Losses under the R&W Policy up to the coverage limitation thereunder; and (C) any claim made under the R&W Policy shall be deemed to have been validly made against APLD for the purposes of Section 7.1(b) and such claim shall survive in accordance with the terms of Section 7.1(b); provided, the Purchaser has delivered a Claim Notice in accordance with Section 7.1(e). Any recovery of Loss (or portion of Loss) by the Purchaser under the R&W Policy after any payment of Loss by the Issuer or APLD, as applicable, shall be repaid promptly by the Purchaser Indemnified Party to the Issuer or APLD, as applicable; provided, however, that the Purchaser shall not be required to make such reimbursement payment to the Issuer or APLD, as applicable, to the extent there is, or such payment would result in, outstanding or unpaid Loss.

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(e) In the event that a Purchaser Indemnified Party seeking indemnification becomes aware (i) of any claim for any Loss for which indemnification may be sought under this Section 7.1 (an "Indemnification Claim") or (ii) that any Legal Proceeding shall have commenced, or any claim shall be asserted, by any Person not party to this Agreement which could give rise to an Indemnification Claim (a "Third Party Claim"), the Purchaser Indemnified Party shall promptly deliver written notice of any Indemnification Claim or Third Party Claim (a "Claim Notice") to APLD; provided, that so long as such Claim Notice is given within the applicable time period described in Section 7.1(b), no delay on the part of the Purchaser Indemnified Party in giving any such notice shall relieve APLD of any indemnification obligation hereunder unless (and then solely to the extent that) APLD is prejudiced by such delay. Each Claim Notice shall be in writing and (A) shall describe in reasonable detail the basis for indemnification claimed by the Purchaser Indemnified Party, including a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arisen, (B) if such Claim Notice is being given with respect to a Third Party Claim, shall describe in reasonable detail such Third Party Claim (to the extent then known) and shall be accompanied by copies of all relevant pleadings, demands and other papers served on the Purchaser Indemnified Party and (C) shall specify the amount of (or if not finally determined, a good faith estimate of) the Losses being incurred by, or imposed upon, the Purchaser Indemnified Party on account of the basis for the claim for indemnification.

(f) APLD shall have the right, at its sole option and expense, using counsel of its choice (who shall be reasonably acceptable to the Purchaser Indemnified Party), to defend, negotiate, settle or otherwise handle any Third Party Claim, and if APLD elects to defend, negotiate, settle or otherwise handle any Third Party Claim, it shall be entitled to control, and make all decisions with respect

thereto, and within ten (10) days after receipt of notice of the underlying Third Party Claim (or sooner, if the nature of the Indemnification Claim so requires) (the “Indemnity Dispute Period”) APLD shall notify the Purchaser Indemnified Party of its intent to do so. If APLD does not elect within the Indemnity Dispute Period to defend against, negotiate, settle or otherwise handle any Indemnification Claim, the Purchaser Indemnified Party may defend, negotiate, settle or otherwise handle such Third Party Claim in accordance with this Agreement. If APLD elects to defend, negotiate, settle with or otherwise handle any Third Party Claim, the Purchaser Indemnified Party may participate, at its own expense, in the defense of such Third Party Claim; provided, however, that the Purchaser shall be entitled to participate in any such defense with separate counsel, reasonably acceptable to APLD, at the reasonable expense of APLD if (i) so requested by APLD or (ii) in the reasonable opinion of counsel to APLD, a conflict exists between the Purchaser Indemnified Party and the counsel selected by APLD (so long as the Purchaser Indemnified Party gives prompt written notice of such conflict to APLD and the opportunity to cure any such conflict); provided, further, that APLD shall not be required to pay for more than one such counsel for all Purchaser Indemnified Parties in connection with any Third Party Claim. APLD and the Issuer, on the one hand, and the Purchaser, on the other hand, agree to cooperate with each other in connection with the defense, negotiation or settlement of any such Third Party Claim, including providing information reasonably available to such Party and any assistance reasonably requested in order to ensure the proper and adequate defense of any such claim. Notwithstanding anything in this Section 7.1(f) to the contrary, APLD shall not, without the written consent of the Purchaser Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed), settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment (each, a “Settlement”) unless (A) the claimant and APLD provide to such Purchaser Indemnified Party an unqualified release from the Third Party Claim, (B) such Settlement does not contain any admission of fraud or wrongdoing on behalf of the Purchaser Indemnified Party, the Group Companies or the Business, and (C) with respect to any non-monetary provision of such Settlement, such provisions would not impose any restrictions or obligations on the Purchaser Indemnified Party, the Group Companies or the Business as a whole. If APLD does not undertake within the Indemnity Dispute Period to defend against an Indemnification Claim, then APLD shall have the right to participate in any such defense at its sole cost and expense. Notwithstanding the foregoing or anything in this Section 7.1(d) to the contrary, the Purchaser Indemnified Party shall not effect a Settlement without the prior written consent of APLD, which consent shall not be unreasonably withheld, conditioned or delayed.

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(g) In the event that a Purchaser Indemnified Party has delivered a Claim Notice in respect of an Indemnification Claim that does not involve a Third Party Claim, APLD and the Purchaser Indemnified Party shall attempt in good faith to resolve any disputes with respect to such Claim Notice within forty-five (45) days of the delivery by APLD thereof, and if not resolved in such forty-five (45) day period, such Indemnification Claim may be resolved through judicial actions, suits or proceedings brought by either such party or by such other means as such parties mutually agree.

(h) Except as expressly provided in this Section 7.1 or in the case of Fraud, the Parties hereto acknowledge and agree that from and after the Closing, no Party hereto (or any of their respective Affiliates) shall be permitted to make, and no Party (or any of their respective Affiliates) shall have any liability or obligation with respect to, any claims for any breach of any representation or warranty set forth herein or any covenant or agreement herein that is to have been performed by a Party on or prior to the Closing or for detrimental reliance or any other right or remedy (whether in contract, in tort or at law or in equity) in connection with this Agreement. In furtherance of the foregoing, from and after the Closing, except in the case of Fraud, the Purchaser on one hand, and APLD and the Issuer on the other hand, hereby waives (on behalf of itself, each of their respective controlled Affiliates and each of its Representatives), to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action (including any statutory rights to contribution or indemnification) relating to the organization, management or operation of the Issuer, its Subsidiaries or the Business on or prior to the Closing (including any right, whether arising at Law or in equity, to seek indemnification, contribution, cost recovery, damages, or any other recourse or remedy) (other than any rights, claims or causes of action under this Agreement or any Transaction Agreement (which claims shall remain subject to the applicable limitations set forth herein or therein)). Except in the case of Fraud, the rights and claims waived pursuant to the immediately preceding sentence, include, to the fullest extent permitted under applicable Law, claims for breach of contract, for breach (negligent or otherwise) of representation or warranty, and claims for breach of duty.

(i) Each of the Issuer and APLD acknowledges and agrees that, except for the representations and warranties contained in Section 4 or any other Transaction Agreement, neither the Purchaser nor any other Person on behalf of the Purchaser makes or has made any other representation or warranty, express or implied, at Law or in equity. Subject to Section 7.2, (i) the representations and warranties of the Purchaser in Section 4 of this Agreement shall survive until the date that is eighteen (18) months following the Closing Date, except that the Purchaser Fundamental Representations shall survive until the date that is three (3) years following the Closing Date, and (ii) the obligations and covenants required by this Agreement to be performed or complied with by the Purchaser shall terminate at Closing, except that all such obligations and covenants that by their nature are required to be performed following the Closing shall survive in accordance with their terms. Notwithstanding the foregoing, except as set forth in Section 6.2, no representation, warranty, covenant or agreement made in this Agreement shall survive any termination of this Agreement.

(j) From and after the Closing, except in the event of Fraud, the sole and exclusive remedy of the Purchaser for any breach or failure to be true and correct, or alleged breach or failure to be true and correct, of any representation or warranty in Section 2 or Section 3 hereof, or any covenant or agreement in this Agreement, shall be indemnification in accordance with this Section 7.

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(k) Notwithstanding anything to the contrary in this Section 7.1, in no event shall the Issuer or APLD be liable to any Purchaser Indemnified Parties for any punitive, incidental, consequential, special, or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or any damages based on any type of multiple, except to the extent such damages are payable by the Purchaser Indemnified Parties to a third-party.

(l) Payments by the Issuer or APLD, as applicable, pursuant to this Section 7.1 in respect of any Losses shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received in cash by any Purchaser (or the Issuer) in respect of any such claim. The Purchaser shall use commercially reasonable efforts to recover under insurance policies for any Losses prior to seeking indemnification from the Issuer or APLD, as applicable, under this Agreement; provided, however, that the foregoing shall not require the Purchaser to commence any Legal Proceeding.

(m) With respect to Indemnification Claims under Section 7.1(a)(ii)(1), the calculation of indemnifiable Losses shall be reduced to equal, and the Issuer shall not be liable for an amount greater than, fifteen percent (15%) of the aggregate amount of the Purchaser Indemnified Parties' collective Losses for each such Indemnification Claim; provided, however, that the reasonable costs of investigation, attorney's fees or other out-of-pocket costs incurred by the Purchaser in pursuing a claim for Losses shall not be so reduced. By way of example, if the Issuer suffers a loss of \$5,000,000 that relates to a misrepresentation or breach of a representation (other than an Issuer Fundamental Representation or a direct Loss), then the Purchaser Indemnified Parties would be entitled to recover no more than \$750,000 (15% of the \$5,000,000) in the aggregate.

(n) Nothing contained in this Section 7.1 shall in any manner limit or restrict a claim for (i) Fraud or (ii) recovery under any R&W Policy, if obtained.

7.2 Non-Recourse. Notwithstanding anything to the contrary in this Agreement or any other Transaction Agreement, (a) this Agreement may only be enforced against, and all Legal Proceedings (whether in contract or in tort, in law or in equity) that may be based upon, arise out of or relate to this Agreement or the other Transaction Agreements, or the negotiation, execution or performance of this Agreement or the other Transaction Agreements (including any representation or warranty made in or in connection with this Agreement or the other Transaction Agreements or as an inducement to enter into this Agreement or the other Transaction Agreements), may be made only against the Persons that are expressly identified as parties thereto, and then only with respect to the specific obligations set forth herein or therein with respect to such party and (b) no Person who is not a named party to this Agreement or the other Transaction Agreements, including any past, present or future director, officer, employee, incorporator, member, manager, partner, equityholder, Affiliate, agent, attorney or representative of any named party to this Agreement or the other Transaction Agreements (or any Affiliate of any of the aforementioned) (the "Non-Party Affiliates"), shall have any liability (whether in contract or in tort, in Law, in equity, granted by statute or based upon any theory that seeks to impose liability of an entity party against its owners or Affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or such other Transaction Agreements (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or such other Transaction Agreements (as the case may be) or the negotiation or execution hereof or thereof and each Party waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates to the maximum extent permitted by Law. The Non-Party Affiliates are expressly intended as third-party beneficiaries of this provision of this Agreement. Without limiting the foregoing, to the maximum extent permitted by Law, each Party disclaims any reliance on any Non-Party Affiliate with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

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7.3 Successors and Assigns; No Third Party Beneficiaries. This Agreement and the rights and obligations hereunder are not assignable (whether by operation of Law or otherwise) unless such assignment is consented to in writing by the other Parties hereto; provided, that notwithstanding the foregoing, the Purchaser may assign any of its rights or delegate any of its duties under this Agreement to any of their Permitted Transferees without the consent of any other Person; provided, that no such assignment shall relieve the assigning Party of its obligations hereunder. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the

respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

7.4 Governing Law. This Agreement and all matters arising directly or indirectly herefrom shall be governed by and construed in accordance with the laws of the State of Delaware in all respects as such laws are applied to agreements among Delaware residents entered into and performed entirely within the State of Delaware, without giving effect to conflict of law principles thereof that would result in the application of any other Laws. The Parties (a) hereby irrevocably and unconditionally submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware or, if such court refuses or otherwise declines to exercise jurisdiction, the state courts of Delaware or the United States District Court for the District of Delaware (collectively, the "Chosen Courts") for the purpose of any Legal Proceeding arising out of or based upon this Agreement, (b) agree not to commence any Legal Proceeding arising out of or based upon this Agreement except in the Chosen Courts and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such Legal Proceeding, any claim that it is not subject personally to the jurisdiction of the Chosen Courts, that the Legal Proceeding is brought in an inconvenient forum, that the venue of the Legal Proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

7.5 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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7.6 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that money damages or legal remedies would not be an adequate remedy for any such damages. Therefore, it is accordingly agreed that, in addition to any other remedy at Law or in equity, each Party shall be entitled to an injunction or injunctions to prevent or restrain any breach or threatened breach of this Agreement by any other Party and to enforce specifically the terms and provisions of this Agreement, to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of any other Party, in the Chosen Courts or any other court of competent jurisdiction, and appropriate injunctive relief shall be granted in connection therewith. Any Party seeking an injunction, a decree or Order of specific performance or other equitable remedy shall not be required to provide any bond or other security in connection therewith and any such remedy shall be in addition to and not in substitution for any other remedy to which such Party is entitled at Law or in equity. Each Party agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (a) the other Party has an adequate remedy at Law or (b) an award of specific performance is not an appropriate remedy for any reason at Law or in equity. Each of the Parties hereby waives (i) any defenses in any action for specific performance, including the defense that a remedy at Law would be adequate, and (ii) any requirement under any Law to post a bond or other security as a prerequisite to obtaining equitable relief. Notwithstanding anything to the contrary, while the Issuer and APLD may pursue both a grant of specific performance prior to termination of this Agreement, and payment of the Termination Fee in the event this Agreement is terminated in circumstances where payable, neither the Issuer nor APLD shall in any circumstances or event be entitled to receive both a grant of specific performance to cause the Closing to occur pursuant to this Section 7.6 (or otherwise) and payment of the Termination Fee (or interest or monetary damages of any kind).

7.7 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7.8 Titles and Subtitles; Made Available to the Purchaser. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. References to documents or agreements having been disclosed to, delivered to or made available to the Purchaser shall mean that such documents or agreements were posted to

the Intralinks “Project Lender” data room (the “Data Room”) or otherwise delivered to the Purchaser or its Representatives, in each case at least one (1) Business Day prior to the Effective Date.

7.9 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by electronic mail (in the case of electronic mail, to be effective with a copy sent by any other method permitted hereunder or when the receiving party confirms receipt of such notice sent by electronic mail) or sent, postage prepaid, by registered, certified or express mail or reputable overnight courier service and shall be deemed given when so delivered by hand or electronic mail (in the case of electronic mail, to be effective with a copy sent by any other method permitted hereunder or when the receiving party confirms receipt of such notice sent by electronic mail), or if mailed, three (3) days after mailing (or one (1) Business Day in the case of express mail or overnight courier service), as follows:

If to the Issuer or APLD:

APLD HPC Holdings LLC  
c/o Applied Digital Corporation  
3811 Turtle Creek Blvd., Suite 2100  
Dallas, TX 75219  
Attention: Wes Cummins  
Email: [\*\*\*]

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

Lowenstein Sandler LLP  
1251 Avenue of the Americas, 18<sup>th</sup> Floor  
New York, New York 10020  
Attention: Steven E. Siesser, Esq.  
Brooke A. Gillar, Esq.  
Email: [\*\*\*]  
[\*\*\*]

If to the Purchaser:

c/o Macquarie Infrastructure and Real Assets Inc.  
660 Fifth Avenue  
New York NY 10103  
Attention: Anton Moldan  
Lincoln Heilner  
Email: [\*\*\*]  
[\*\*\*]

with an e-mail copy (which shall not constitute notice) to:

Email: [\*\*\*]

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

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
Attention: Gabriel Silva  
Keegan Lopez  
Email: [\*\*\*]  
[\*\*\*]

or to such other respective addresses and/or email addresses as each Party may designate by notice given in accordance with the provisions of this Section 7.9.

7.10 Amendments and Waivers. Any term of this Agreement may be amended, terminated or waived only with the written consent of the Issuer and the Purchaser. Any amendment or waiver effected in accordance with this Section 7.10 shall be binding upon the Parties hereto and their successors and permitted assigns (including, with respect to the Purchaser, its Permitted Transferees) of the Subject Units.

7.11 Severability. If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable for any reason whatsoever (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

7.12 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Party under this Agreement, upon any breach or default of any other Party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, or otherwise afforded to any Party, shall be cumulative and not alternative.

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7.13 Expenses. At the Closing, except to the extent of the Offset Amount, the Issuer shall reimburse the Purchaser for all reasonable out-of-pocket costs and expenses incurred by the Purchaser or its Affiliates in connection with their due diligence of the Business and preparation, negotiation, execution and delivery of the Transaction Agreements, including out-of-pocket fees and expenses associated with their third-party advisors (including auditors, legal, financial, tax and other similar advisors) (the "Purchaser Transaction Expenses"), up to a maximum aggregate amount of Three Million Dollars (\$3,000,000) (the "Purchaser Expense Cap"); provided, however, that if any amounts are reimbursed by the Issuer prior to the Closing (in each case with the prior written consent of the Purchaser), the Purchaser Expense Cap shall be deemed to be reduced to an amount equal to Three Million Dollars (\$3,000,000) less the aggregate amount already reimbursed as of such time. At the Closing, the Issuer shall pay all Issuer Transaction Expenses, up to a maximum aggregate amount of Three Million Dollars (\$3,000,000).

7.14 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) and the Transaction Agreements constitute the full and entire understanding and agreement between the Parties with respect to the subject matter hereof. Upon execution of this Agreement, that certain Summary of Principal Terms and Conditions for Perpetual Preferred Equity Investment, dated as of December 3, 2024, by and between MIP VI Holdings II, LLC and APLD is hereby terminated and any other written or oral agreement relating to the subject matter hereof existing between the Parties are expressly canceled.

*[Signature Page Follows]*

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**IN WITNESS WHEREOF**, the Parties have executed and delivered this Unit Purchase Agreement as of the date first above written.

**ISSUER:**

APLD HPC Holdings LLC

By: /s/ Wes Cummins

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Name: Wes Cummins  
Title: President and Authorized Signatory

**APLD:**

Applied Digital Corporation

By: /s/ Wes Cummins

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Name: Wes Cummins

Title: Chief Executive Officer

[Signature Page to Unit Purchase Agreement]

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**PURCHASER:**

MIP VI HPC Holdings, LLC

By: /s/ Anton Moldan

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Name: Anton Moldan

Title: President

By: /s/ Mache Mouzakis

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Name: Mache Mouzakis

Title: Assistant Secretary

[Signature Page to Unit Purchase Agreement]

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**EXHIBITS AND SCHEDULES**

Exhibit A – **COMMON STOCK PURCHASE WARRANTS**

Exhibit B – **REGISTRATION RIGHTS AGREEMENT**

Schedule 1 – **PERMITTED ENCUMBRANCES**

Schedule 2 – **SPECIFIED CUSTOMERS**

Schedule 3 – **SPECIFIED ACTIONS**

Schedule 4 – **SPECIFIED PROPERTIES**

Schedule 5 – **CLOSING BANK ACCOUNT**

Schedule 6 – **DISCLOSURE SCHEDULE**

Schedule 7 – **DEBT TERMS**

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**EXHIBIT A**



## COMMON STOCK PURCHASE WARRANTS

(See attached)

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THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT UNDER ANY CIRCUMSTANCES BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

### FORM OF COMMON STOCK PURCHASE WARRANT<sup>1 2</sup>

#### APPLIED DIGITAL CORPORATION

Issue Date: [●]<sup>3</sup> (the “Issue Date”)

THIS COMMON STOCK PURCHASE WARRANT (this “Warrant”) certifies that, for value received, [●]<sup>4</sup> or its permitted assigns (the “Holder”), is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Initial Exercise Date (as defined below) and on or prior to the Termination Date (as defined below), but not thereafter, to purchase from Applied Digital Corporation, a Nevada corporation (the “Company”), up to 4,458,069 shares (subject to the limitations contained herein, including Sections 2(d) and 3(e), and subject to adjustment hereunder, the “Warrant Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”). The purchase price of one Warrant Share shall be equal to the Exercise Price, as defined in Section 2(b).

As used in this Warrant:

“Accepted HPC Opportunities” has the meaning ascribed to such term in the HPC Holdings LLCA.

“Affiliate” means, with respect to any Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person; for purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day excluding Saturday, Sunday or any day which is a legal holiday under the laws of the State of New York or a day on which banking institutions are authorized or required by law or other governmental action to close.

“Capacity” has the meaning ascribed to such term in the HPC Holdings LLCA.

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<sup>1</sup> This form contemplates two (2) Warrants issuable at, and conditioned upon, Closing; provided, that the Unit Purchase Agreement (the “UPA”) is executed by January 13, 2025. The Warrants will be identical, subject to the inclusion of prong (2) to the definition of Exercise Conditions in the second Warrant. Form of Warrant will be attached as an exhibit to the UPA.

<sup>2</sup> To be accompanied by Registration Rights Agreement, which agreement will be signed concurrently with the Warrants.

<sup>3</sup> Insert Closing Date.

<sup>4</sup> Holder entity to be named in future draft.

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“Capital Stock” means, with respect to any Person, (i) any capital stock of such Person, (ii) any security convertible, with or without consideration, into any capital stock of such Person, (iii) any other shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the capital stock of such Person and (iv) any other equity interest in, or right to vote generally in elections of directors or the comparable governing body of, such Person.

“Draw Closing Date” has the meaning ascribed to such term in the HPC Holdings LLCA.

“Draw Notice” has the meaning ascribed to such term in the HPC Holdings LLCA.

“ELN Building A” has the meaning ascribed to such term in the HPC Holdings LLCA.

“ELN Building B” has the meaning ascribed to such term in the HPC Holdings LLCA.

“ELN Building C” has the meaning ascribed to such term in the HPC Holdings LLCA.

“ELN Campus” has the meaning ascribed to such term in the HPC Holdings LLCA.

“ELN Project” has the meaning ascribed to such term in the HPC Holdings LLCA.

“Exercise Condition[s]” means [(1)] the funding in cash by the Holder or its Affiliates, on the terms and conditions set forth in the HPC Holdings LLCA, of at least \$900,000,000 in the aggregate in connection with the ELN Project (unless a lower dollar amount is otherwise mutually agreed in writing by the Holder and HPC Holdings) [and (2) execution by the hyperscaler listed on Schedule I hereto (or any controlled Affiliate thereof) of one or more definitive agreements for the lease of (i) the entire ELN Building A and (ii) all or a portion of ELN Building B and/or ELN Building C, so long as (a) the Capacity under all such agreements is equal to or greater than 250 MW and (b) at least 100 MW of such Capacity is leased pursuant to a modified gross or triple net lease]<sup>5</sup>.

“HPC Holdings” means APLD HPC Holdings LLC, a Delaware limited liability company.

“HPC Holdings LLCA” means the Second Amended and Restated Limited Liability Company of HPC Holdings, dated [●], 2025, as may be amended, amended and restated or supplemented from time to time.

<sup>6</sup>“Initial Exercise Date” means the later to occur of (x) the six (6)-month anniversary of the Issue Date and (y) [the date on which the Exercise Condition has been fully satisfied/the first date on which both of the Exercise Conditions have been fully satisfied].

“Person” means any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or governmental entity (or any department, agency, or political subdivision thereof).

“Reported Outstanding Shares Number” means (x) the Company’s most recent periodic or annual report filed with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) a more recent written notice by the Company or the Transfer Agent to the Holder, in each case setting forth the number of shares of Common Stock outstanding.

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<sup>5</sup> To be included for second Warrant only. Remainder of definition to be updated accordingly for [first/second] Warrants.

<sup>6</sup> Definition to be updated accordingly for [first/second] Warrants.

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“Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary trading market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

“Termination Date” shall mean the close of business on the fifth (5<sup>th</sup>) anniversary of the Initial Exercise Date; provided, however, if [both of] the Exercise Condition[s] has[ve] not occurred on [the 30 month anniversary of the Issue Date], then the Termination Date shall be [the 30 month anniversary of the Issue Date] and this Warrant shall not have become exercisable at all; provided, that in the event a Draw Notice is delivered within twenty (20) Business Days prior to the Termination Date, then, so long as the Holder or its Affiliates have fully funded such Draw Notice in accordance with its terms and on the terms and conditions set forth in the HPC Holdings LLCA, the Termination Date shall be the thirtieth (30<sup>th</sup>) calendar day following such Draw Closing Date; provided, further, that in the event the

Company has delivered Draw Notices for one or more Accepted HPC Opportunities with respect to the ELN Project in the aggregate amount of less than \$900,000,000 prior to the 30-month anniversary of the Issue Date and Holder or its Affiliates exercise their right under Section 5 of Exhibit C-3 to the HPC Holdings LLCA to fund the shortfall on or before the date that is five (5) Business Days after such 30-month anniversary of the Issue Date (such date, the “Forced Funding Date”), the Termination Date shall be the thirtieth (30th) calendar day following the Forced Funding Date.

“Trading Day” means a day on which:

- (a) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed; and
- (b) during the one-half hour period ending on the scheduled close of trading on any Trading Day no material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock existed or occurred.

If the Common Stock is not so listed or traded, “Trading Day” means a business day.

“VWAP” per share of Common Stock on any Trading Day means the per share volume-weighted average price as displayed under the heading Bloomberg VWAP on Bloomberg (or, if Bloomberg ceases to publish such price, any successor service reasonably chosen by the Company) page “APLD <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on such Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by an Independent Financial Advisor retained for such purpose by the Company). The VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

Section 1. Vesting; Exercisability. The Holder’s right to exercise this Warrant with respect to the Warrant Shares is subject to vesting and limitations on exercisability as follows:

(a) This Warrant and the Holder’s rights hereunder with respect to the Warrant Shares (subject to adjustment or otherwise to the restrictions as set forth in this Warrant, including, without limitation, Section 2(d) and Section 3) will vest and become exercisable on the Initial Exercise Date.

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(b) Subject solely to each adjustment, if any, to the extent required under Section 3, and notwithstanding anything to the contrary in this Warrant, in no event shall this Warrant be exercisable for more than 4,458,069 Warrant Shares.

(c) The Holder’s right to receive the Warrant Shares, and the Company’s obligation to issue such Warrant Shares, upon exercise of this Warrant shall be subject to the limitations set forth in Section 2(d)(i).

Section 2. Exercise.

(a) Subject to Section 1, exercise of the purchase rights represented by this Warrant with respect to Warrant Shares may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly completed and executed copy of a notice of exercise substantially in the form attached hereto as Exhibit A (a “Notice of Exercise”). For the avoidance of doubt, this Warrant shall not be exercisable unless and until [the/both] Exercise Condition[s] [is/have been] fully satisfied. The “Exercise Date” shall be the date on which such delivery shall have taken place (or be deemed to have taken place) unless a later date is specified in the Notice of Exercise. Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank; provided, however, in the event that the Holder has not delivered such aggregate Exercise Price within the period provided above, the Company shall not be obligated to deliver such Warrant Shares hereunder until such payment is made. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares

available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation promptly after the relevant event shall have occurred. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases and the Holder may request that a new Warrant be issued to it representing the amount of Underlying Shares not purchased and the Company shall promptly comply with such request. The Company shall deliver any objection to any Notice of Exercise within two (2) Business Days of receipt of such notice. **The Holder, by acceptance of this Warrant, acknowledges and agrees that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The “Exercise Price” per Warrant Share shall be \$8.29, subject to any adjustment required by Section 3.

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(c) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. Upon each exercise of this Warrant, the Company shall promptly, but in no event later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period after delivery of the applicable Notice of Exercise (subject to delivery by the Holder to the Company of the aggregate Exercise Price payable pursuant to Section 2(b)), instruct the transfer agent for the Common Stock (the “Transfer Agent”) to record the issuance of the Warrant Shares purchased hereunder to the Holder in book-entry form on such date (such date, the “Warrant Share Delivery Date”) pursuant to the Transfer Agent’s regular procedures. The Warrant Shares shall be deemed to have been issued, and the Holder shall be deemed to have become a holder of record of such shares for all purposes, as of the Exercise Date with payment to the Company of the Exercise Price having been paid.

(ii) Rescission Rights. If the Company fails to issue or cause to have issued the Warrant Shares pursuant to Section 2(c)(i) or does not issue Warrant Shares as a result of the limitations in Section 1(c) or Section 2(d) within the time period specified (a “Delivery Failure”), then the Holder will have the right to rescind such exercise in its sole discretion and the payment of any Exercise Price shall be returned immediately to such Holder and the Company shall reinstate the portion of the Warrant and the equivalent number of Warrant Shares for which such Delivery Failure related; provided that, such exercise shall not limit the Holder’s exercise of any other remedies which may be available to the Holder in the event of such Delivery Failure, including Section 5(n) hereof. The right of rescission of the Holder under this Section 2(c)(ii) is subject to delivery by the Holder of the aggregate Exercise Price payable pursuant to Section 2(b).

(iii) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue, transfer, stamp or other similar tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder; provided, that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of the Warrant Shares or a new Warrant to any Person other than the Holder, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Company the amount of any such tax or governmental charge, or has established to the satisfaction of the Company that such tax or governmental charge has been paid. Without limiting the generality of the foregoing, the Company shall pay all fees required for same-day processing of any Notice of Exercise and all other expenses of the Company and its registrar(s) and transfer agent(s) in connection with delivery of the Warrant Shares and replacement warrants. All payments in respect of this warrant shall be subject to applicable withholding in respect of taxes. Where withholding in respect of taxes is imposed with respect to the Warrant, including in respect of an actual or deemed (for federal withholding tax purposes) payment in respect of this Warrant, the Holder shall promptly transfer to the Company the amount required to be withheld; provided that prior to any such payments the Company shall be required to demonstrate the basis for, and calculation of, such withholding.

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

(v) Sale of Stock by the Holder. Notwithstanding any other provision hereof, if an exercise of any portion of this Warrant is to be made in connection with a public offering of the Common Stock (pursuant to a merger, sale of stock, or otherwise) or in connection with a tender or exchange offer for shares of Common Stock of the Company, such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

(d) Holder's Exercise Limitations.

(i) Notwithstanding anything to the contrary contained in this Warrant, the Company shall not effect the exercise of any portion of this Warrant, and, no Holder shall have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, any Holder (together with any other Person whose beneficial ownership of Common Stock would be aggregated with such Holder's for purposes of Section 13(d) or Section 16 of the Securities Exchange Act of 1934 (the "Exchange Act") and the applicable regulations of the Securities and Exchange Commission (the "Commission") thereunder, including any "group" of which any Holder is or may be deemed a member (collectively, the "Attribution Parties") would beneficially own in excess of 4.99% (the "Maximum Percentage") of the number of shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and its Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder and its Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by the Holder or any of its Attribution Parties subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 2(d)(i). In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and its Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and its Attribution Parties' aggregate beneficial ownership exceeds the applicable Maximum Percentage (the "Excess Shares") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the Exercise Price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company by any Holder, the Maximum Percentage may be increased or decreased with respect to such Holder to any other percentage as specified in such notice; provided, that (i) any such increase or decrease in the Maximum Percentage will not be effective until the 75th day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and its Attribution Parties requesting such increase or decrease and not to any other Holder of this Warrant. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by any Attribution Party for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to exercise this Warrant, in whole or in part, pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability.

(ii) Except as set forth in the exclusions to calculating beneficial ownership in Sections 2(d)(i)(A) and (B), for purposes of this Section 2(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(d) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Maximum Percentage, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercises of the Warrant that are not in compliance with the Maximum Percentage. The Company shall have the sole right to enforce the provisions of Section 2(d)(i). If the Company receives a Notice of Exercise from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Shares Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Notice of Exercise would otherwise cause the Holder's beneficial ownership, as determined pursuant to Section 2(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be purchased pursuant to such Notice of Exercise (the number of shares by which such purchase is reduced, the "Reduction Shares") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares.

The provisions of this Section 2(d) shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation or the application of the rules of The Nasdaq Stock Market.

### Section 3. Certain Adjustments.

(a) Stock Dividends, Subdivision, Combinations and Consolidations. If the Company, at any time while this Warrant is outstanding (in whole or in part): (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock (or other class of Capital Stock of the Company then issuable upon exercise of this Warrant) or any other equity or equity equivalent securities payable in shares of Common Stock (or such other class of Capital Stock) (which, for avoidance of doubt, shall not include any shares of Common Stock (or such other class of Capital Stock) issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock (or other class of Capital Stock of the Company then issuable upon exercise of this Warrant) into a larger number of shares or (iii) combines or consolidates (including, without limitation, by reverse stock split) outstanding shares of Common Stock (or other class of Capital Stock of the Company then issuable upon exercise of this Warrant) into a smaller number of shares, then in each case the Exercise Price shall be adjusted by multiplying the Exercise Price immediately before the applicable corporate action by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and thereafter the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or consolidation. If the Company, at any time while this Warrant is outstanding (in whole or in part) distributes rights on shares of its Common Stock (or other class of Capital Stock of the Company then issuable upon exercise of this Warrant) in connection with a shareholder rights plan, no adjustment shall be made pursuant to this Section 3 and any such rights shall accompany the Warrant Shares issued pursuant to this Warrant if such shareholder rights plan remains in effect.

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(b) Reclassifications, Reorganizations, Consolidations, Mergers and Sales. In the event of (i) any capital reorganization of the Company, (ii) any reclassification or recapitalization of the stock of the Company (other than (x) a change in par value or from par value to no par value or from no par value to par value or (y) as a result of a stock dividend, subdivision, combination or consolidation of shares as to which Section 3(a) shall apply), (iii) any consolidation or merger of the Company with or into another Person (where the Company is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock or any other class of Capital Stock then issuable upon exercise of this Warrant), (iv) any sale of all or substantially all of the assets of the Company, or (v) any similar transaction, this Warrant shall remain outstanding and, after such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction, be exercisable for the kind and number of shares of stock or other securities or property ("Alternate Consideration") of the Company or of the successor corporation resulting from such consolidation or sale, or surviving such merger, if any, to which the holder of the number of Warrant Shares underlying this Warrant (at the time of such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction, and subject to the limitations set forth in Section 1 and Section 2) would have been entitled upon such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction. In such event, the aggregate Exercise Price otherwise payable for the shares of Common Stock (or such other class of Capital Stock) issuable upon exercise of this Warrant shall be allocated among the Alternate Consideration receivable as a result of such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction, in proportion to the respective fair market values of such Alternate Consideration. If and to the extent that the holders of Common Stock (or such other class of Capital Stock) have the right to elect the kind or amount of consideration receivable upon consummation of such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction, then the consideration that the Holder shall be entitled to receive upon exercise shall be specified by the Holder, which specification shall be made by the Holder by the later of (A) ten (10) Business Days after the Holder is provided with a final version of all material information concerning such choice as is provided to the holders of Common Stock (or such other class of Capital Stock), and (B) the last time at which the holders of Common Stock (or such other class of Capital Stock) are permitted to make their specifications known to the Company; provided, however, that if the Holder fails to make any specification within such time period, the Holder's choice shall be deemed to be whatever choice is made by a plurality of all holders of Common Stock (or such other class of Capital Stock) that are not affiliated with the Company (or, in the case of a consolidation, merger, sale or similar transaction, any other party thereto) and affirmatively make an election (or of all such holders if none of them makes an election). From and after any such reorganization, reclassification, recapitalization, consolidation, merger, sale or similar transaction, all references to "Warrant Shares" herein shall be deemed to refer to the Alternate Consideration to which the Holder is entitled pursuant to this Section

3(b). The provisions of this clause shall similarly apply to successive reorganizations, reclassifications, recapitalizations, consolidations, mergers or sales.

(c) Other Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) other than any dividend or distribution referred to in Section 3(a) or Section 3(b) (a “Distribution”), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that such participation by the Holder in any such Distribution would result in the Holder exceeding the Maximum Percentage, then, at such time, the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such later time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage). To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

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(d) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock (or such other Company security as is then issuable upon exercise of this Warrant) deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (or such other Company security) (excluding treasury shares, if any) issued and outstanding on such date.

(e) Notice to Holder.

(i) Adjustment to Terms of Warrant. Whenever any of the terms of this Warrant are adjusted pursuant to any provision of this Section 3 or any other applicable provision hereof, the Company shall promptly send to the Holder a notice signed by a duly authorized officer of the Company and setting forth (x) the Exercise Price, number of Warrant Shares and, if applicable, the kind and amount of Alternate Consideration purchasable hereunder after such adjustment and (y) the facts requiring such adjustment in reasonable detail.

(ii) Notice to Allow Exercise by Holder. If, during the period in which this Warrant is outstanding, (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

#### Section 4. Transfer of Warrant and Warrant Shares.

(a) Restrictive Legend. Until such time as no longer required by applicable securities laws, this Warrant and the Warrant Shares (unless and until sold in a transaction registered under the Securities Act of 1933, as amended (the “Securities Act”) or, in the case of Warrant Shares, transferred pursuant to Rule 144 promulgated under the Securities Act, or any successor rule or regulation hereafter adopted by the Commission, as such rule may be amended from time to time (“Rule 144”)) will be stamped or imprinted with a legend in substantially the following form:

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THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT UNDER ANY CIRCUMSTANCES BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

At such time as the foregoing legend is not so required, upon request of the Holder and, if requested by the Company, receipt by the Company (from Company counsel) of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Act and applicable state securities laws, the Company shall promptly cause the legend to be removed from any certificate or other instrument for this Warrant or Warrant Shares.

(b) Transferability. Subject to the provisions of Section 4(a), the Holder may sell, assign, transfer, pledge or dispose of all or any portion of this Warrant and/or the Warrant Shares (including, without limitation, any registration rights attaching to such Warrant and/or Warrant Shares) at any time or from time to time without the prior approval of the Company. In connection with any transfer of all or any portion of this Warrant, the Holder must provide an assignment form substantially in the form attached hereto as Exhibit B duly completed and executed by the Holder or any such subsequent Holder, as applicable, and the proposed transferee must consent in writing to be bound by the terms and conditions of this Warrant. Any transfer of all or any portion of this Warrant shall also be subject to the Securities Act and other applicable federal or state securities or blue sky laws. Upon any transfer of this Warrant in full, the Holder shall be required to physically surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued; provided that if the Holder or their assignee request, and upon receipt of this Warrant, the Company shall issue each the Holder and its assignee new Warrants each providing for the purchase of the number of shares of Common Stock set forth in such request, which amounts, when taken together shall equal the number of Warrant Shares issuable under this Warrant. This Warrant or any portion thereof shall not be sold, assigned, transferred, pledged or disposed of in violation of the Securities Act, federal or state securities laws or the Company’s certificate of incorporation.

(c) Warrant Register. The Company shall register this Warrant upon records to be maintained by or on behalf of the Company for that purpose (the “Warrant Register”) in the name of the record Holder hereof from time to time. Absent manifest error or actual notice to the contrary, the Company may deem and treat the Holder of this Warrant so registered as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes.

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#### (d) Leak-Out Agreement.

(i) The Holder agrees with the Company that, subject to any other contemporaneously executed leak-out or lock-up agreement that may be executed in proximity to this Warrant regarding Holder’s trading with terms that are no less restrictive than the terms contained herein, following the [Initial Exercise Date] until the date that the Holder no longer holds any Common Stock underlying this Warrant (such period, the “Restricted Period”), neither the Holder, nor any Affiliate of such Holder which (x) had or has knowledge of the transactions contemplated by the HPC Holdings LLCA, (y) has or shares discretion relating to such Holder’s investments or trading or information concerning such Holder’s investments, including in respect of the Warrant Shares, or (z) is subject to such Holder’s review or input concerning such Affiliate’s investments or trading (together, the “Holder’s Trading Affiliates”), collectively, shall sell dispose or otherwise transfer, directly or indirectly, (including, without limitation, any sales, short sales, swaps or any derivative transactions that would be equivalent to any sales or short positions) on any Trading Day during the Restricted Period (any such date, a “Date of Determination”), shares of Common Stock underlying this Warrant (collectively, the “Restricted Securities”) in an amount representing



more than, when measured at any given point during the applicable Date of Determination, eight percent (8%) of the cumulative daily trading volume of the Common Stock for such Date of Determination (which cumulative trading volume shall include pre-market, market and post-market trading volume for such date) as reported by Bloomberg, LP; provided, that the foregoing restriction shall not apply to any actual “long” (as defined in Regulation SHO of the Securities Exchange Act of 1934, as amended) sales by the Holder or any of the Holder’s Trading Affiliates at a price equal to at least 200% of the then Exercise Price under this Warrant (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar events occurring after the [Initial Exercise Date]).

(ii) Notwithstanding anything herein to the contrary, during the Restricted Period, the Holder may, directly or indirectly, sell or transfer all, or any part, of the Restricted Securities to any Person (an “Assignee”) in a transaction which does not need to be reported on the Nasdaq consolidated tape, without complying with (or otherwise limited by) the restrictions set forth in this Warrant; provided, that as a condition to any such sale or transfer an authorized signatory of the Company and such Assignee duly execute and deliver a leak-out agreement containing the terms set forth in this Section 4(d) (an “Assignee Agreement”, and each such transfer a “Permitted Transfer”) and, subsequent to a Permitted Transfer, sales of the Holder and the Holder’s Trading Affiliates and all Assignees (other than any such sales that constitute Permitted Transfers) shall be aggregated for all purposes of this Warrant and all Assignee Agreements.

#### Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise. Except as expressly set forth herein, this Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(c).

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon delivery by the Holder to the Company of (i) notice of the loss, theft, destruction or mutilation of this Warrant and (ii) in the case of loss, theft or destruction, an indemnity agreement in a form and amount reasonably satisfactory to the Company or, in the case of mutilation, surrender of the mutilated Warrant, the Company will make and deliver a new Warrant of like tenor dated as of the Issue Date.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

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(d) Authorized Shares. The Company covenants that, during the period this Warrant is exercisable (in whole or in part), it will reserve from its authorized and unissued Common Stock, free from any preemptive rights and free from all taxes, liens and charges, a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock is listed or traded and that upon issuance, the Warrant Shares will be listed on any national securities exchange upon which the Common Stock is listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and full payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and non-assessable, not subject to any preemptive rights and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

(e) Replacement of Warrant. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of a customary indemnity agreement reasonably satisfactory to the Company or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of the same tenor and date.

(f) Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of laws thereof. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(g) Nonwaiver. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies.

(h) Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service addressed: (i) if to the Company, to its office at Applied Digital Corporation, 3811 Turtle Creek Blvd., Suite 2100, Dallas, Texas, 75219 (Attention: Chief Financial Officer), (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(k) Amendment. Subject to the requirements of Section 2(d)(i), this Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

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(l) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(m) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(n) Remedies. The Holder's sole and exclusive remedy in the event of a breach of the provisions of this Warrant shall be specific performance. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees that the Holder shall be entitled to specific performance as the sole and exclusive remedy for any such breach.

(o) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

*[Signatures Contained on the Following Page]*

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IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the Issue Date.

APPLIED DIGITAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Common Stock Purchase Warrant]

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**EXHIBIT A**

**NOTICE OF EXERCISE**

To: Applied Digital Corporation

Reference is made to that certain Common Stock Purchase Warrant (the “Warrant”) issued by Applied Digital Corporation, (the “Company”) on [●]. Capitalized terms used but not otherwise defined herein shall have the respective meanings given thereto in the Warrant.

The undersigned Holder of the Warrant hereby elects to exercise the Warrant for \_\_\_\_\_ Warrant Shares, subject to delivery of the aggregate Exercise Price for the Warrant Shares as to which the Warrant is so exercised.

The undersigned Holder hereby instructs the Company to issue the applicable number of Warrant Shares in the name of the undersigned Holder.

The undersigned Holder hereby represents and warrants to the Company that, as of the date hereof:

1. Experience; Accredited Investor Status. The Holder (i) is an accredited investor as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act, (ii) is capable of evaluating the merits and risks of its investment in the Company, (iii) has the capacity to protect its own interests, and (iv) has the financial ability to bear the economic risk of its investment in the Company.

2. Company Information. The Holder has been provided access to all information regarding the business and financial condition of the Company, its expected plans for future business activities, material contracts, intellectual property, and the merits and risks of its purchase of the Warrant Shares, which it has requested or otherwise needs to evaluate an investment in the Warrant Shares. It has had an opportunity to discuss the Company’s business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company’s operations and facilities. It has also had the opportunity to ask questions of, and receive answers from, the Company and its management regarding the terms and conditions of this investment and all such questions have been answered to its satisfaction.

3. Investment. The Holder has not been formed solely for the purpose of making this investment and is acquiring the Warrant Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution of any part thereof. It understands that the Warrant Shares have not been registered under the Securities Act or applicable state and other securities laws and are being issued by reason of a specific exemption from the registration provisions of the Securities Act and applicable state and other securities laws, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of its representations as expressed herein.

4. Transfer Restrictions. The Holder acknowledges and understands that (i) transfers of the Warrant Shares are subject to transfer restrictions under the federal securities laws and (ii) it may have to bear the economic risk of this investment for an indefinite period of time unless the Warrant Shares are subsequently registered under the Securities Act and applicable state and other securities laws or unless an exemption from such registration is available.

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Exhibit A-1

Name of Registered Owner: \_\_\_\_\_  
Signature of Authorized Signatory of Registered Owner \_\_\_\_\_  
Name of Authorized Signatory: \_\_\_\_\_  
Title of Authorized Signatory: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A-2

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**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_ (Please Print)  
Address: \_\_\_\_\_  
Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_ (Please Print)  
Holder's Signature: \_\_\_\_\_  
Holder's Address: \_\_\_\_\_

Exhibit B-1

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**EXHIBIT B**

**REGISTRATION RIGHTS AGREEMENT**

(See attached)

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**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "Agreement") is made and entered into as of [●], 2025,<sup>1</sup> by and between Applied Digital Corporation, a Nevada corporation (together with any successor entity thereto, the "Company"), on the one hand, and each of the several Purchasers (as defined below) or their designated Affiliates as set forth on Schedule I hereto (each, an "Investor" and collectively, the "Investors"), on the other hand.

**WHEREAS**, in connection with the Unit Purchase Agreement, dated as of January 13, 2025 (the "Purchase Agreement"), by and among APLD HPC Holdings LLC, a Delaware limited liability company, the Company and the purchasers signatory thereto (the "Purchasers"), the Company has agreed to issue the Warrants (as defined below) to the Investors under the conditions set forth therein;

**WHEREAS**, the execution of this Agreement is a condition to the closing of the transactions contemplated by the Purchase Agreement; and

**WHEREAS**, in connection with the issuance of the Warrants to the Investors, the Company has agreed to provide the Investors the registration rights provided for in this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each Investor hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms have the respective meanings set forth in this Section 1 and other terms are defined throughout this Agreement:

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

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

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

“Effective Date” means, as to a Registration Statement, the date on which such Registration Statement is first declared effective by the Commission.

“Effectiveness Deadline” means on or prior to the earlier of (a) the 90<sup>th</sup> calendar day after the Filing Date (or the 30<sup>th</sup> calendar day if the Commission does not review the Registration Statement) and (b) the date that the Warrants become exercisable pursuant to their terms; provided, in either case, that, in the event the Commission rules and regulations prohibit the Registration Statement from being declared effective on or prior to the date determined above, the Company may delay the Effectiveness Deadline until the tenth (10<sup>th</sup>) Business Day following the date that the Commission rules and regulations no longer prohibit such Registration Statement from being declared effective.

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<sup>1</sup> Insert Closing Date.

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“Effectiveness Period” means, as to any Registration Statement required to be filed pursuant to this Agreement, the period commencing on the Effective Date of such Registration Statement and ending on the earliest of: (a) the date that all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holders of the Registrable Securities included therein, (b) the date that all of the Registrable Securities covered by such Registration Statement have been previously sold in accordance with Rule 144, (c) such time as all of such Registrable Securities covered by such Registration Statement may be sold by the Holders without any restriction pursuant to Rule 144, including holding period, volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 (assuming the Holder is not then an Affiliate of the Company), as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holders, or (d) five (5) years from the Effective Date of the first Registration Statement filed with the Commission registering for resale the Registrable Securities.

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

“Filing Date” means (i) with respect to a Registration Statement on Form S-3, on or prior to the sixtieth (60<sup>th</sup>) calendar day following the date hereof, provided that such date is on or after June 1, 2025 or (ii) with respect to a Registration Statement on a form other than Form S-3, on or prior to the one hundred twentieth (120<sup>th</sup>) calendar day following the date hereof; provided, however, in either case, if the Filing Date does not occur during an “open trading window” as determined by the Company’s insider trading policies, as in effect from time to time, (an “Open Trading Window”), the Filing Date shall be the second (2<sup>nd</sup>) Business Day of the next Open Trading Window.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities and, if other than the Investor, a Person to whom the rights hereunder have been properly assigned pursuant to Section 7 hereof.

“Losses” has the meaning given to it in Section 5(a).

“New York Courts” means the state and federal courts sitting in the City of New York, Borough of Manhattan, State of New York.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means: (i) any shares of Common Stock (including shares of Common Stock issuable upon exercise of the Warrants); and (ii) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event, or any price adjustment as a result of such stock splits, reverse stock splits or similar events with respect to any of the securities referenced in clause (i) above, in each case whether now owned or hereafter acquired by a Holder. Notwithstanding the foregoing, a security shall cease to be a Registrable Security for purposes of this Agreement (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement (in which case, only any security disposed of by such Holder shall cease to be a Registrable Security), (b) such Registrable Securities have been previously sold in accordance with Rule 144 (in which case, only any security disposed of by such Holder shall cease to be a Registrable Security) or (c) the Holder of such Registrable Securities may resell such securities without any restriction under Rule 144, including holding period, volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 (assuming the Holder is not then an Affiliate of the Company), as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the affected Holders.

“Registration Statement” means any registration statement of the Company filed or confidentially submitted with the Commission under the Securities Act that covers the resale of Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement.

“Required Holders” means the Holders of a majority of the outstanding Warrants on an as-exercised basis.

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

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

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

“Trading Market” means any of the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, or any other national securities exchange, or OTCQB or OTCQX (or any successors to any of the foregoing).

“Warrants” means warrants to purchase Common Stock issued pursuant to the Purchase Agreement.

## 2. Registration.

(a) On or prior to the applicable Filing Date, the Company shall prepare and file or confidentially submit with the Commission a Registration Statement covering the resale of all Registrable Securities not already covered by an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 (a “Resale Shelf Registration Statement”). If the Company is eligible to file a Resale Shelf Registration Statement on Form S-3 pursuant to Rule 462(e) under the Securities Act (an “Automatic Shelf Registration Statement”), the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Company is not eligible to use an Automatic Shelf Registration Statement, the Resale Shelf Registration Statement shall be on Form S-3, or if Form S-3 is not available to the Company, another appropriate form. The Resale Shelf Registration Statement shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Resale Shelf Registration Statement, other than as to the characterization of any Holder as an underwriter, which shall not occur unless such characterization is consistent with written information provided by the Holder in the Selling Holder Questionnaire) a “Plan of Distribution” in substantially the form attached hereto as Annex A. The Company shall cause the Resale Shelf Registration Statement to be declared effective under the Securities Act as soon as reasonably practicable but, in any event, no later than the Effectiveness Deadline, and shall use its commercially reasonable efforts to keep such Resale Shelf Registration Statement continuously effective during its entire Effectiveness Period. By 5:00 p.m. (New York City time) on the Business Day immediately following the Effective Date of the Resale Shelf Registration Statement, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to such Resale Shelf Registration Statement (whether or not such filing is technically required under such Rule).

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(b) In the event that the Registrable Securities are initially registered on Form S-1 pursuant to Section 2(a) hereof and the Company subsequently becomes eligible to use a registration statement on Form S-3, promptly following such date on which the Company becomes eligible to use a registration statement on Form S-3 to register Registrable Securities for resale, the Company shall file a Registration Statement on Form S-3 covering all securities that are then deemed Registrable Securities (or a post-effective amendment on Form S-3 to the then effective Registration Statement) for an offering to be made on a continuous basis pursuant to Rule 415 (an “S-3 Resale Shelf Registration Statement”) and shall cause such S-3 Resale Shelf Registration Statement to be filed as soon as commercially reasonable and declared effective under the Securities Act as soon as reasonably possible thereafter. Such S-3 Resale Shelf Registration Statement shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such S-3 Resale Shelf Registration Statement, other than as to the characterization of any Holder as an underwriter, which shall not occur unless such characterization is consistent with written information provided by the Holder in the Selling Holder Questionnaire) a “Plan of Distribution” in substantially the form attached hereto as Annex A. The Company shall use its commercially reasonable efforts to keep such S-3 Resale Shelf Registration Statement continuously effective under the Securities Act during the entire Effectiveness Period. By 5:00 p.m. (New York City time) on the Business Day immediately following the Effective Date of such S-3 Resale Shelf Registration Statement, the Company shall file with the Commission in accordance with Rule 424 under the Securities Act the final prospectus to be used in connection with sales pursuant to such S-3 Resale Shelf Registration Statement (whether or not such filing is technically required under such Rule). For the avoidance of doubt, the Company shall maintain the effectiveness of the Form S-1 then in effect until such time as an S-3 Resale Shelf Registration Statement has been declared effective by the Commission.

(c) [Reserved].

(d) The Company will give notice of its intention to file any Registration Statement to the Holders at least ten (10) Business Days prior to the intended filing date of such Registration Statement. Each Holder agrees to furnish to the Company a completed Questionnaire in the form attached to this Agreement as Annex B (a “Selling Holder Questionnaire”) at least five (5) Business Days prior to the anticipated filing date of such Registration Statement. If a Holder does not provide all such information the Company may reasonably request (a “Non-Complying Holder”), that Holder will not be named as a selling securityholder in the Prospectus and will not be permitted to sell its securities under such Registration Statement. From and after the effective date of such Registration Statement, the Company shall use its commercially reasonable efforts, as promptly as is practicable after a Non-Complying Holder delivers the information required pursuant to the previous two sentences, (i) if required by applicable law, to file with the Commission a post-effective amendment to such Registration Statement; and, if the Company shall file a post-effective amendment to such Registration Statement, use reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable; or (ii) to prepare and, if permitted or required by applicable law, to file a supplement to the related Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document so that the Non-Complying Holder is named as a selling securityholder in such Registration Statement and the related Prospectus, and so that such Holder

is permitted to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law; provided, that the Company shall not be required to file more than one post-effective amendment under this clause (b) in any calendar quarter.

3. Registration Procedures. In connection with the Company's registration obligations hereunder:

(a) The Company shall not file a Registration Statement, any Prospectus or any amendments or supplements thereto in which the "Selling Stockholders" section thereof materially differs from the disclosure received from a Holder in its Selling Holder Questionnaire (as amended or supplemented). The Company shall not file a Registration Statement, any Prospectus or any amendments or supplements thereto in which it (i) characterizes any Holder as an underwriter, unless such characterization is consistent with written information provided by the Holder in the Selling Holder Questionnaire, (ii) excludes a particular Holder due to such Holder refusing to be named as an underwriter, unless so required pursuant to written comments received from the Commission or (iii) reduces the number of Registrable Securities being registered on behalf of a Holder without such Holder's express written authorization. The Company shall also ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading.

(b) Subject to an Allowed Grace Period (as defined below), the Company shall (i) prepare and file with the Commission such amendments, including post-effective amendments, to each Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement continuously effective as to the applicable Registrable Securities for its Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) to the extent required under applicable securities laws, prepare and file with the Commission such amendments, including post-effective amendments, to each Registration Statement and the Prospectus used in connection therewith as may be necessary to name new or additional selling securityholders to whom the rights hereunder have been properly assigned pursuant to Section 7 hereof, (iii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424, (iv) respond as promptly as reasonably possible to any comments received from the Commission with respect to each Registration Statement or any amendment thereto and (v) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the Registration Statement(s) and the disposition of all Registrable Securities covered by each Registration Statement.

(c) The Company shall notify the Holders as promptly as reasonably possible (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed; and (B) with respect to each Registration Statement or any post-effective amendment, when the same has become effective; (ii) of the issuance by the Commission of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and (iv) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify the Holders of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(e) The Company shall promptly deliver to the Holders, without charge, as many copies of each Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as the Holders may reasonably request. The Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.



(f) Prior to any public offering of Registrable Securities, the Company shall register or qualify such Registrable Securities for offer and sale under the securities or blue sky laws of all jurisdictions within the United States as any Holder may reasonably request in writing, to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the Registration Statements; provided, however, in connection with any such registration or qualification, the Company shall not be required to (i) qualify to do business in any jurisdiction where the Company would not otherwise be required to qualify, (ii) subject itself to general taxation in any such jurisdiction, (iii) file a general consent to service of process in any jurisdiction or (iv) make any change to the Company's articles of incorporation or bylaws.

(g) Except to the extent the Registrable Securities are eligible to be transferred in book-entry form through the facilities of the Depository Trust Company or the book-entry system of the Company's transfer agent, the Company shall cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement(s). Such book-entry securities or certificates, as applicable, shall be free, to the extent permitted by applicable federal securities laws, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may request.

(h) As promptly as reasonably possible upon the occurrence of any event contemplated by Section 3(c)(iv), the Company shall prepare a supplement or amendment, including a post-effective amendment, to the affected Registration Statements or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement nor any Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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(i) For so long as the Registrable Securities that have been registered under a Registration Statement remain Registrable Securities, the Company shall notify the Holders thereof in writing of the happening of any event, as promptly as reasonably practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and shall, subject to an Allowed Grace Period, promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission. The Company shall also notify the Holders of Registrable Securities that have been registered under a Registration Statement in writing as promptly as reasonably possible when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when the Registration Statement or any post-effective amendment relating to such Registrable Securities has become effective.

(j) [Reserved].

(k) Other than the information regarding a Holder provided by such Holder to the Company for inclusion in a Registration Statement, the Company shall hold in confidence and not make any disclosure of information concerning a Holder provided to the Company unless: (i) disclosure of such information is necessary to comply with federal or state securities laws; (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement; (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction; or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning a Holder is sought in or by a court or governmental body of competent jurisdiction or through other means, to the extent legally permitted to do so or not requested by a governmental body to refrain from doing so, give prompt written notice to such Holder and allow such Holder, at the Holder's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(l) The Company shall use its commercially reasonable efforts to cause all of the Registrable Securities covered by a Registration Statement to be listed on each Trading Market on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such Trading Market. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(l).

(m) The Company shall cooperate with the Holders who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates or book-entry securities (not bearing any restrictive legend to the

extent permitted by the federal securities laws) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates or book-entry securities to be in such denominations or amounts, as the case may be, as the Holders may reasonably request and registered in such names as the Holders may request.

(n) If requested by a Holder and to the extent legally required for the Holder to offer and sell Registrable Securities, the Company shall as soon as practicable, subject to an Allowed Grace Period: (i) incorporate in a prospectus supplement or post-effective amendment such information as a Holder reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by a Holder holding any Registrable Securities.

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(o) Notwithstanding anything to the contrary contained herein, upon the advice of Company counsel, for a period (an “Allowed Grace Period”) of not more than thirty (30) consecutive days or for a total of not more than forty-five (45) days in any twelve (12) month period, the Company may suspend the use of any Prospectus included in any Registration Statement contemplated by this Agreement in the event that the Company determines in good faith that such suspension is necessary to (i) delay the disclosure of material nonpublic information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (ii) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in light of the circumstances under which they were made, not misleading; provided, that the Company shall promptly (A) notify the Holder in writing of the commencement (and the termination) of an Allowed Grace Period, but shall not (without the prior written consent of the Holder) disclose to the Holder any material nonpublic information giving rise to an Allowed Grace Period, (B) advise the Holder in writing to cease all sales under such Registration Statement until the end of the Allowed Grace Period and (C) use its commercially reasonable efforts to terminate an Allowed Grace Period as promptly as practicable.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation: (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed or traded for trading and (B) in compliance with applicable state securities or blue sky laws, reasonably agreed to by the Company in writing); (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by a Holder); (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of counsel for the Company; (v) Securities Act liability insurance, if the Company so desires such insurance; and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any Trading Market as required hereunder. In no event shall the Company be responsible for any broker or similar commissions incurred by any Holder or, except to the extent provided for in the Purchase Agreement, any legal fees or other cost of the Holders.

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## 5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, agents, investment advisors, partners, members and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys’ fees) and expenses (collectively, “Losses”), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any

preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, except to the extent, that such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was furnished in writing to the Company by or on behalf of such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 7.

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising solely out of or based solely upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of or based solely upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading to the extent, but only to the extent that, such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by or on behalf of such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and furnished in writing by or on behalf of such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party, in its discretion, has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided, that, the Indemnifying Party shall pay for no more than two separate sets of counsel for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement (i) imposes no liability or obligation on the Indemnified Party, (ii) includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding and (iii) does not include any admission of fault, capability, wrongdoing or malfeasance by or on behalf of the Indemnified Party.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent

with this Section 5(c)) shall be paid to the Indemnified Party, as incurred, within ten (10) Business Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section 5(d) was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Reports Under the Exchange Act. With a view to making available to the Holders the benefits of Rule 144 or any other similar rule or regulation of the Commission that may at any time permit the Holders to sell Registrable Securities of the Company to the public without registration, the Company agrees, for so long as Registrable Securities are outstanding and held by the Holders, to:

(a) make and keep public information available, as those terms are understood, defined and required in Rule 144;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company is and remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Holder so long as such Holder owns Registrable Securities, promptly upon reasonable request in writing by such Holder, such information as may be reasonably and customarily requested to permit the Holders to sell such securities pursuant to Rule 144 without registration.

7. Assignment of Registration Rights. The rights under this Agreement shall be automatically assignable by the Investor to any transferee of all or any portion of such Investor's Warrants or Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights and such transferee agrees to be bound by the terms of this Agreement, and a copy of such agreement is furnished to the Company within five (5) Business Days after such assignment; (ii) the Company is, within five (5) Business Days after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is, if applicable, restricted under the Securities Act or applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

## 8. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder, of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to the Registration Statement.

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(c) Discontinued Disposition. Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(c), 3(i) or 3(o), such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company may provide appropriate stop orders to enforce the provisions of this paragraph.

(d) Amendments and Waivers. Except as set forth otherwise herein, the provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, without the written consent of the Company and the Required Holders; *provided, however*, that for purposes of this Section 8(d), Registrable Securities that are owned, directly or indirectly, by the Company or any of its subsidiaries shall not be deemed to be outstanding. Notwithstanding the foregoing, a waiver or consent to or departure from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders may be given by such Holder; *provided* that the provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the first and second sentences of this paragraph.

(e) Notices. All notices and other communications, provided for or permitted hereunder, shall be made in writing and delivered by electronic mail (with receipt confirmed), overnight courier, registered or certified mail, return receipt requested, or by telegram:

(i) if to a Holder, at the most current address given by the transfer agent and registrar of the Shares to the Company; or

(ii) if to the Company, shall be sufficient in all respects if delivered to the Company at the offices of the Company at 3811 Turtle Creek Blvd., Suite 2100, Dallas, Texas 75219, Attention: Mark Chavez.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, including, without limitation and without the need for an express assignment or assumption, subsequent Holders.

(g) Execution and Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile or email transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile or email signature were the original thereof.

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(h) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to any principle or rule that would require the application of the law of any other state. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, employees or agents) will be commenced in the New York Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either party shall commence a Proceeding to enforce any provisions of this Agreement, then the prevailing party in such Proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Proceeding.

(i) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(j) Entire Agreement. This Agreement and the Purchase Agreement and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Purchase Agreement and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(l) Registrable Securities Held by the Company or its Affiliates. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company, its subsidiaries or members of management of the Company and the board of directors of the Company shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(m) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(n) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder under this Agreement are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder under this Agreement. Nothing contained herein or in any Purchase Agreement, and no action taken by any Holder pursuant thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or the Purchase Agreement, or with respect to any Holder's beneficial ownership of its Registrable Securities. Each Holder acknowledges that no other Holder will be acting as agent of such Holder in enforcing its rights under this Agreement. Each Holder shall be entitled to independently protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any Proceeding for such purpose. The Company acknowledges that each of the Holders has been provided with the same Registration Rights Agreement for the purpose of closing a transaction with multiple Holders and not because it was required or requested to do so by any Holder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**COMPANY:**

**APPLIED DIGITAL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

*Signature Page to Registration Rights Agreement*

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**INVESTOR:**

By: \_\_\_\_\_  
Name:  
Title:

*Signature Page to Registration Rights Agreement*

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**Annex A**

**Plan of Distribution**

The selling stockholders and any of their pledgees, donees, transferees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of Common Stock on any stock exchange, market or trading facility on which the shares are traded or quoted or in private transactions. These sales may be at fixed or negotiated prices. The selling stockholders may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits investors;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- through the writing of options on the shares;
- to cover short sales made after the date that this Registration Statement is declared effective by the Commission;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted by applicable law.

The selling stockholders may also sell shares under Rule 144 promulgated under the Securities Act of 1933, as amended (the “Securities Act”), or another exemption, if available, rather than under this prospectus. The selling stockholders shall have the sole and absolute discretion not to accept any purchase offer or make any sale of shares if it deems the purchase price to be unsatisfactory at any particular time.

The selling stockholders or their respective pledgees, donees, transferees or other successors in interest, may also sell the shares directly to market makers acting as principals and/or broker-dealers acting as agents for themselves or their customers. Such

broker-dealers may receive compensation in the form of discounts, concessions or commissions from the selling stockholders and/or the purchasers of shares for whom such broker-dealers may act as agents or to whom they sell as principal or both, which compensation as to a particular broker-dealer might be in excess of customary commissions. Market makers and block purchasers purchasing the shares will do so for their own account and at their own risk. It is possible that a selling stockholder will attempt to sell shares of common stock in block transactions to market makers or other purchasers at a price per share which may be below the then existing market price. We cannot assure that all or any of the shares offered in this prospectus will be issued to, or sold by, the selling stockholders. The selling stockholders and any brokers, dealers or agents, upon effecting the sale of any of the shares offered in this prospectus, may be deemed to be “underwriters” as that term is defined under the Securities Act, the Exchange Act and the rules and regulations of such acts. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act.

We are required to pay all fees and expenses incident to the registration of the shares, but excluding brokerage commissions or underwriter discounts.

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#### Annex A-1

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The selling stockholders, alternatively, may sell all or any part of the shares offered in this prospectus through an underwriter. The selling stockholders have not entered into any agreement with a prospective underwriter and there is no assurance that any such agreement will be entered into.

The selling stockholders may pledge their shares to their brokers under the margin provisions of customer agreements. If a selling stockholder defaults on a margin loan, the broker may, from time to time, offer and sell the pledged shares. The selling stockholders and any other persons participating in the sale or distribution of the shares will be subject to applicable provisions of the Exchange Act, and the rules and regulations under such act, including, without limitation, Regulation M. These provisions may restrict certain activities of, and limit the timing of purchases and sales of any of the shares by, the selling stockholders or any other such person. In the event that any of the selling stockholders are deemed an affiliated purchaser or distribution participant within the meaning of Regulation M, then the selling stockholders will not be permitted to engage in short sales of common stock. Furthermore, under Regulation M, persons engaged in a distribution of securities are prohibited from simultaneously engaging in market making and certain other activities with respect to such securities for a specified period of time prior to the commencement of such distributions, subject to specified exceptions or exemptions. In addition, if a short sale is deemed to be a stabilizing activity, then the selling stockholders will not be permitted to engage in a short sale of our common stock. All of these limitations may affect the marketability of the shares.

If a selling stockholder notifies us that it has a material arrangement with a broker-dealer for the resale of the common stock, then we would be required to amend the registration statement of which this prospectus is a part, and file a prospectus supplement to describe the agreements between the selling stockholder and the broker-dealer.

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#### Annex A-2

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### Annex B

#### Selling Securityholder Notice and Questionnaire

The undersigned beneficial owner of common stock (the “Common Stock”), of Applied Digital Corporation, a Nevada corporation (the “Company”), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “Commission”) a Registration Statement for the registration and resale of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of [●], 2025,<sup>2</sup> (the “Registration Rights Agreement”), among the Company and the Investor named therein. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

#### QUESTIONNAIRE



**1. Name.**

- (a) Full Legal Name of Selling Securityholder:  
\_\_\_\_\_
- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities Listed in Item 3 below are held:  
\_\_\_\_\_
- (c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by the questionnaire):  
\_\_\_\_\_

**2. Address for Notices to Selling Securityholder:**

Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Contact Person: \_\_\_\_\_

**3. Beneficial Ownership of Registrable Securities:**

Type and Amount of Registrable Securities beneficially owned:  
\_\_\_\_\_

**4. Broker-Dealer Status:**

- (a) Are you a broker-dealer?

Yes  No

Note: If yes, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

- (b) Are you an affiliate of a broker-dealer?

Yes  No

<sup>2</sup> Insert Closing Date.

Annex B-1

- (c) If you are an affiliate of a broker-dealer, do you certify that you bought the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

**5. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.**

*Except as set forth below in this Item 5, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item 3.*

Type and Amount of Other Securities beneficially owned by the Selling Securityholder:  
\_\_\_\_\_

**6. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

7. The Company has advised each Selling Securityholder that it is the view of the Commission that it may not use shares registered on the Registration Statement to cover short sales of Common Stock made prior to the date on which the Registration Statement is declared effective by the Commission, in accordance with SEC Division of Corporation Finance Compliance & Disclosure Interpretations, Securities Act Sections, §239.10. If a Selling Securityholder uses the prospectus for any sale of the Common Stock, it will be subject to the prospectus delivery requirements of the Securities Act. The Selling Securityholders will be responsible to comply with the applicable provisions of the Securities Act and Exchange Act, and the rules and regulations thereunder promulgated, including, without limitation, Regulation M, as applicable to such Selling Securityholders in connection with resales of their respective shares under the Registration Statement.

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the Effective Date for the Registration Statement.

Certain legal consequences arise from being named as a Selling Securityholder in the Registration Statement and related prospectus. Accordingly, the undersigned is advised to consult their own securities law counsel regarding the consequence of being named or not being named as a Selling Securityholder in the Registration Statement and the related prospectus.

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Annex B-2

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By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus. The undersigned hereby elects to include the Registrable Securities owned by it and listed above in Item 3 (unless otherwise specified in Item 3) in the Registration Statement.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated: \_\_\_\_\_ Beneficial Owner:

By: \_\_\_\_\_

Name:

Title:

**PLEASE EMAIL A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:**

**Lowenstein Sandler LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Attention: Bonnie Schipper  
[\*\*\*]**

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Annex B-3

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## Applied Digital Agrees to Build a Partnership with Macquarie Asset Management for Funding of up to \$5.0 Billion to Drive HPC Growth

*The \$5.0 Billion Investment Can Support Over 2 GW of HPC Data Center Development*

- Funds managed by Macquarie Asset Management (“MAM”) to invest up to \$900 million in the Company’s Ellendale High Performance Computing (“HPC”) data center campus (the “Ellendale HPC Campus”).
- Agreement to provide MAM a right to invest up to an additional \$4.1 billion across Applied Digital’s future HPC data center pipeline.
- The MAM investment, in conjunction with future project financing, to be used to repay project-level debt and allow the Company to recover over an estimated \$300 million of its equity investment in the Ellendale HPC Campus.
- MAM’s investment will take the form of a perpetual preferred and 15% common equity interest of Applied Digital’s HPC business segment, providing Applied Digital an 85% ownership stake in both existing and future HPC assets (minimizing dilution to Applied Digital’s public stockholders).
- Transformative agreement positions the Company to firmly establish itself as a top-tier HPC data center designer, builder and operator in the United States with its purpose-built and proprietary design to run advanced AI workloads for both training and inference.

**DALLAS – January 14, 2025 — Applied Digital Corporation (Nasdaq: APLD) (“Applied Digital” or the “Company”),** a designer, builder and operator of next-generation digital infrastructure for HPC applications, entered today into a \$5.0 billion perpetual preferred equity financing facility, with investment vehicles of funds managed by MAM, for its HPC business conducted through APLD HPC Holdings LLC (“APLDH”), a subsidiary of Applied Digital.

Under the terms of the unit purchase agreement executed today, APLDH will issue perpetual preferred equity units and common equity units for an investment by MAM of \$2.25 million for each executed lease of 1 MW of capacity, up to \$900 million to support the full 400 MW build-out of the Ellendale HPC Campus, as further detailed below.

The investment proceeds from MAM, in conjunction with future project financing, will be used to complete the buildout of the 400 MW Ellendale HPC Campus, repay the existing bridge debt, currently outstanding at approximately \$180 million, allow the Company to recover over an estimated \$300 million of its equity investment in the Ellendale HPC Campus, fund platform G&A, and pay transaction expenses. MAM also has a right of first refusal on all future HPC data center project funding, up to an additional \$4.1 billion for 30 months following close.

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“We believe this expanded relationship with MAM positions Applied Digital for significant growth in the industry, establishing Applied Digital as one of the fastest-growing HPC data center owners, operators and developers in the United States. At today’s build costs, we will have a significant portion of the equity needed to construct over 2.0 GW of HPC data center capacity, including our Ellendale HPC Campus,” said Wes Cummins, Chairman and CEO of Applied Digital.

“With an 85% ownership stake in both existing and future HPC assets and access to a project-level preferred equity financing facility sufficient to fund our HPC project pipeline, we believe we are poised for transformative progress. We are excited to have MAM’s support

as we establish ourselves as a leader in the Tier 3 data center infrastructure sector, while continuing to develop and operate large-scale, state of the art data centers for world-class customers at the forefront of the AI revolution.”

“We are excited to partner with Applied Digital to build and scale its HPC data center platform,” said Anton Moldan, Senior Managing Director of Macquarie Asset Management. “Applied Digital has a differentiated strategy with access to a unique near-term power portfolio across North America in markets attractive for computing needs which address the most demanding AI and other HPC applications at scale. The significant progress at the Ellendale HPC campus makes this a very compelling opportunity for us as well as for potential hyperscale customers. With our global experience as an owner and manager of data center platforms, we see this as highly attractive opportunity to help build an industry-leading HPC data center company well positioned in these high growth segments of the market.”

The preferred equity will accrue a dividend at a rate of 12.75% per annum, paid in kind or, at APLDH’s election, cash, which will increase by 87.5 basis points on the fifth and sixth anniversaries of the closing, if still outstanding. The preferred equity carries a minimum 1.80x multiple of invested capital liquidation preference, inclusive of the value of the common equity. The common equity represents 15% of APLDH’s fully diluted common equity at issuance. MAM’s equity can be redeemed by APLDH at any time after the fifth anniversary of the closing. The Company’s minimum equity contribution will be \$1 million per MW for the rest of the Ellendale HPC campus and \$750,000 per MW for the remainder of the HPC pipeline. The closing of the facility is conditioned upon APLDH executing a lease with a hyperscaler for its 100 MW Ellendale HPC data center under construction acceptable to MAM, completion of the APLDH limited liability company operating agreement and other ancillary documents, as well as other customary closing conditions. At closing MAM will fund \$225 million with additional amounts drawable upon APLDH executing further leases acceptable to MAM, as well as other customary draw conditions.

As the demand for AI innovation accelerates, we believe Applied Digital will stand out as a leader in delivering next-generation data center solutions and GPU cloud services. With hard-to-find access to stranded power and advanced technologies like closed loop liquid-cooling, the Company aims to deliver an ultra-efficient platform tailored for the most complex AI and HPC workloads. We believe Applied Digital’s purpose-built data centers and cost-effective GPU cloud services are designed to power AI, machine learning, graphics rendering, and other critical applications, enabling clients to excel in a rapidly evolving technological landscape.

Northland Capital Markets acted as sole placement agent to the Company. Goldman Sachs & Co. LLC acted as senior financial advisor to the Company. Citizens JMP Securities, LLC and TD Securities acted as financial advisors to the Company. Needham & Company acted as financial advisor to the Company’s board of directors. Lowenstein Sandler LLP acted as legal counsel to the Company. Simpson Thacher & Bartlett LLP acted as legal counsel to MAM.

The securities described above have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor may there be any sale of any securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.



### **About Applied Digital**

Applied Digital (Nasdaq: APLD) develops, builds and operates next-generation data centers and cloud infrastructure. Different by design, the Company’s purpose-built facilities are engineered to unleash the power of accelerated compute and deliver secure, scalable and sustainable digital hosting, along with turnkey CSaaS and GPU-as-a-Service solutions. Backed by deep hyperscale expertise and a robust pipeline of available power, Applied Digital accommodates AI Factories and beyond to support the world’s most exacting AI/ML, blockchain and high-performance computing (HPC) workloads.

### **About Macquarie Asset Management**

Macquarie Asset Management is a global asset manager, integrated across public and private markets. Trusted by institutions, governments, foundations and individuals to manage approximately \$633.7 billion USD in assets, we provide a diverse range of investment solutions including real assets, real estate, credit and equities & multi-asset.

Macquarie Asset Management is part of Macquarie Group, a diversified financial group providing clients with asset management, finance, banking, advisory, and risk and capital solutions across debt, equity and commodities. Founded in 1969, Macquarie Group employs over 20,000 people in 34 markets and is listed on the Australian Securities Exchange. All figures as of September 30, 2024.

Important Notices (Macquarie Asset Management): None of the entities noted in this media release is an authorised deposit-taking institution for the purposes of the Banking Act 1959 (Commonwealth of Australia) and the obligations of these entities do not represent deposits or other liabilities of Macquarie Bank Limited ABN 46 008 583 542 (Macquarie Bank). Macquarie Bank does not guarantee or otherwise provide assurance in respect of the obligations of these entities. In addition, if this media release relates to an investment (a) each investor is subject to investment risk including possible delays in repayment and loss of income and principal invested and (b) none of Macquarie Bank or any other Macquarie Group company guarantees any particular rate of return on or the performance of the investment, nor do they guarantee repayment of capital in respect of the investment.

### **Forward-Looking Statements**

This press release contains “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995 regarding, among other things, future operating and financial performance, product development, market position, business strategy and objectives and the closing of the transaction described herein. These statements use words, and variations of words, such as “will,” “continue,” “build,” “future,” “increase,” “drive,” “believe,” “look,” “ahead,” “confident,” “deliver,” “outlook,” “expect,” “project” and “predict.” Other examples of forward-looking statements may include, but are not limited to, (i) statements of Company plans and objectives, including our evolving business model, or estimates or predictions of actions by suppliers, (ii) statements of future economic performance, (iii) statements of assumptions underlying other statements and statements about the Company or its business, and (iv) the Company’s ability to effectively apply the net proceeds from the transaction as described above. You are cautioned not to rely on these forward-looking statements. These statements are based on current expectations of future events and thus are inherently subject to uncertainty. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the Company’s expectations and projections. These risks, uncertainties, and other factors include: our ability to complete construction of the Ellendale HPC data center; our ability to complete the negotiation and execution of the definitive transaction documents required to close the MAM facility; our ability to raise additional capital to fund the ongoing data center construction and operations; our dependence on principal customers, including our ability to execute leases with key customers, including leases for our Ellendale HPC campus; our ability to timely and successfully build new hosting facilities with the appropriate contractual margins and efficiencies; power or other supply disruptions and equipment failures; the inability to comply with regulations, developments and changes in regulations; cash flow and access to capital; availability of financing to continue to grow our business; decline in demand for our products and services; and maintenance of third party relationships. Information in this release is as of the dates and time periods indicated herein, and the Company does not undertake to update any of the information contained in these materials, except as required by law.

### **Investor Relations Contacts**

Matt Glover or  
Ralf Esper Gateway  
Group, Inc.  
(949) 574-3860  
[APLD@gateway-grp.com](mailto:APLD@gateway-grp.com)

### **Media Contact**

Buffy Harakidas, EVP and Jo Albers JSA  
(Jaymie Scotto & Associates)  
[jsa\\_applied@jsa.net](mailto:jsa_applied@jsa.net)  
(856) 264-7827

**Cover**

**Jan. 13, 2025**

**Cover [Abstract]**

|  |                             |
|--|-----------------------------|
| <u>Document Type</u>                               | 8-K                         |
| <u>Amendment Flag</u>                              | false                       |
| <u>Document Period End Date</u>                    | Jan. 13, 2025               |
| <u>Entity File Number</u>                          | 001-31968                   |
| <u>Entity Registrant Name</u>                      | APPLIED DIGITAL CORPORATION |
| <u>Entity Central Index Key</u>                    | 0001144879                  |
| <u>Entity Tax Identification Number</u>            | 95-4863690                  |
| <u>Entity Incorporation, State or Country Code</u> | NV                          |
| <u>Entity Address, Address Line One</u>            | 3811 Turtle Creek Blvd.     |
| <u>Entity Address, Address Line Two</u>            | Suite 2100                  |
| <u>Entity Address, City or Town</u>                | Dallas                      |
| <u>Entity Address, State or Province</u>           | TX                          |
| <u>Entity Address, Postal Zip Code</u>             | 75219                       |
| <u>City Area Code</u>                              | 214                         |
| <u>Local Phone Number</u>                          | 427-1704                    |
| <u>Written Communications</u>                      | false                       |
| <u>Soliciting Material</u>                         | false                       |
| <u>Pre-commencement Tender Offer</u>               | false                       |
| <u>Pre-commencement Issuer Tender Offer</u>        | false                       |
| <u>Title of 12(b) Security</u>                     | Common Stock                |
| <u>Trading Symbol</u>                              | APLD                        |
| <u>Security Exchange Name</u>                      | NASDAQ                      |
| <u>Entity Emerging Growth Company</u>              | false                       |











