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): December 15, 2023

Onconetix, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-41294**	**83-2262816**
(State or other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

201 E. Fifth Street, Suite 1900 Cincinnati, Ohio	**45202**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(513) 620-4101**

(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:

Title of Each Class	**Trading Symbol(s)**	**Name of Each Exchange on Which Registered**
Common Stock, par value $0.00001 per share	BWV	The Nasdaq Stock Market LLC

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

SHARE EXCHANGE AGREEMENT

This section describes the material provisions of the Share Exchange Agreement (as defined below) but does not purport to describe all of the terms thereof. The following summary is qualified in its entirety by reference to the complete text of the Share Exchange Agreement, a copy of which is attached hereto as Exhibit 2.1. Unless otherwise defined herein, the capitalized terms used below are defined in the Share Exchange Agreement.

General Description of the Share Exchange Agreement

On December 15, 2023, Onconetix, Inc, a Delaware corporation f/k/a Blue Water Biotech, Inc. ("***Onconetix***" or the "***Buyer***"), entered into a Share Exchange Agreement (the "***Share Exchange Agreement***"), by and among (i) Onconetix, (ii) Proteomedix AG, a Swiss Company ("***Proteomedix***" or the "***Company***"), (iii) each of the holders of outstanding capital stock or Company Convertible Securities (other than Company Stock Options) named therein (collectively, the "***Sellers***") and (iv) Thomas Meier, in the capacity as the representative of Sellers in accordance with the terms and conditions of the Share Exchange Agreement (the "***Sellers' Representative***").

Pursuant to the Share Exchange Agreement, subject to the terms and conditions set forth therein, the Sellers agreed to sell to Onconetix, and Onconetix agreed to buy, all of the issued and outstanding equity interests of Proteomedix (the "***Purchased Shares***") in exchange for newly issued shares of common stock of Onconetix, par value $0.00001 per share ("***Buyer Common Stock***"), and newly issued shares of preferred stock of Onconetix, par value $0.00001 per share ("***Series B Convertible Preferred Stock***"), as further described below (the "***Share Exchange***" and the other transactions contemplated by the Share Exchange Agreement, the "***Transactions***").

The consummation (the "***Closing***") of the Share Exchange was subject to customary closing conditions and the execution of the Subscription Agreement (as defined below) entered into with an investor (the "***Investor***"). The Share Exchange closed on December 15, 2023 (the "***Closing Date***").

Consideration

In full payment for the Purchased Shares, Onconetix issued shares (the "***Exchange Shares***") consisting of: (i) 4,083,779 shares of Buyer Common Stock equal to approximately 19.9% of the total issued and outstanding Buyer Common Stock and (ii) 2,692,633 shares of Series B Convertible Preferred Stock convertible into 269,263,300 shares of Buyer Common Stock. The aggregate value of the Exchange Shares at Closing was equal to approximately Seventy-Five Million U.S. Dollars ($75,000,000) (the "***Exchange Consideration***") less the value of the Company Shares for which the Company Stock Options are exercisable immediately prior to the Closing, subject to adjustment for indemnification as described below.

Tungsten Advisors acted as financial advisor to Proteomedix. As part of compensation for services rendered by Tungsten Advisors, $7,500,000 in Exchange Shares was issued to certain affiliates of Tungsten Advisors (the "***Advisor Parties***") out of the total Exchange Consideration issued by Onconetix.

As a result of the Transactions, Proteomedix became a direct, wholly-owned subsidiary of Onconetix.I It is anticipated that, following the Conversion (as defined below) and closing of the investment pursuant to the Subscription Agreement (as defined below), Sellers will own 79.8% of the outstanding equity interests of Onconetix, the Investor will own 5.9% of the outstanding equity interests of Onconetix, and the stockholders of Buyer immediately prior to the Closing will own 5.4% of the outstanding equity interests of Onconetix.

Each option to purchase shares of Proteomdix (each, a "***Company Stock Option***") outstanding immediately before the Closing, whether vested or unvested, remains outstanding until the Conversion unless otherwise terminated in accordance with its terms. At the Conversion, each outstanding Company Stock Option, whether vested unvested, shall be assumed by Onconetix and converted into the right to receive (a) an option to acquire shares of Buyer Common Stock (each, an "***Assumed Option***") or (b) such other derivative security as Onconetix and Proteomedix may agree, subject in either case to substantially the same terms and conditions as were applicable to such Company Stock Option immediately before the Closing. Each Assumed Option shall: (i) represent the right to acquire a number of shares of Buyer Common Stock equal to the product of (A) the number of Company Common Shares that were subject to the corresponding Company Option immediately prior to the Closing, multiplied by (B) the Exchange Ratio; and (ii) have an exercise price (as rounded down to the nearest whole cent) equal to the quotient of (A) the exercise price of the corresponding Company Option, divided by (B) the Exchange Ratio.

Series B Convertible Preferred Stock

Upon Stockholder Approval, each share of Series B Convertible Preferred Stock shall automatically convert into 100 shares of Buyer Common Stock in accordance with the terms of the Certificate of Designation (the "***Conversion***"), a copy of which is attached hereto as Exhibit 4.1. If Stockholder Approval is not obtained by January 1, 2025, Onconetix shall be obligated to cash settle the Series B Convertible Preferred Stock, as described below.

Representations and Warranties

Onconetix, Proteomedix and the Sellers have made customary representations and warranties in the Share Exchange Agreement. The representations and warranties of Onconetix and Proteomedix shall survive until the Conversion and the representations and warranties of the Sellers shall survive until the first anniversary of the Closing.

Indemnification

Until the earlier of (i) Stockholder Approval or (ii) June 30, 2024 (the "***Claim Deadline***"), Onconetix may assert Claims against Proteomedix and Sellers for any and all Losses incurred by Onconetix with respect to: (i) any inaccuracy in or breach of any of the representations or warranties made by Proteomedix contained in the Share Exchange Agreement or (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Proteomedix pursuant to the Share Exchange Agreement. Until the Claim Deadline, the Sellers' Representative, acting on behalf of the Sellers, may assert Claims against Onconetix for any Loss incurred by the Sellers with respect to: (i) any inaccuracy in or breach of any of the representations or warranties of Onconetix contained in the Share Exchange Agreement or (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Onconetix pursuant to the Share Exchange Agreement.

The number of shares of Buyer Common Stock issued upon Conversion shall be increased or decreased by a number determined by dividing the Net Adjustment by the ten-day volume-weighted average price ("***VWAP***") of the Buyer Common Stock for the ten (10)-day period preceding the third day prior to the Closing Date and rounding down to the nearest whole share; provided, however, that (i) there shall be no adjustment to the number of shares of Buyer Common Stock issued upon Conversion if the Net Adjustment is less than $1,000,000 and (ii) the number of shares of Buyer Common Stock issued upon Conversion shall not be increased or decreased by more than 10% of the number of shares of Buyer Common Stock that would be issuable absent such adjustment. As used herein, "***Net Adjustment***" means the absolute value of the difference between the aggregate adjustment in favor of each party with respect to Losses that is agreed by Buyer and the Sellers' Representative or determined by a mutually acceptable dispute resolution firm.

From and after the Closing and until the first anniversary of the Closing, Sellers, severally and not jointly, are required to indemnify Onconetix and its affiliates and their respective representatives (collectively, the "***Buyer Indemnitees***") against (i) any inaccuracy in or breach of any of the representations or warranties of such Seller contained in the Share Exchange Agreement and (ii) breach or non-fulfillment of any covenant, agreement or obligation to be performed by such Seller pursuant to the Share Exchange Agreement. Any payment due from any Seller in respect of an indemnification claim by any Buyer Indemnitee shall solely be satisfied by recourse to the Exchange Shares and the shares of Buyer Common Stock issuable upon the Conversion, with each share of Buyer Common Stock valued at the same price per share of Buyer Common Stock used to determine the Exchange Ratio.

Covenants of the Parties

Each party to the Share Exchange Agreement agreed to use its commercially reasonable efforts to effect the Transactions. Onconetix agreed to use its commercially reasonable efforts to, as soon as practicable, obtain from each holder of more than five percent (5%) of Onconetix's voting stock and each director and executive officer of Onconetix, a duly executed Stockholder Support Agreement (as defined below).

The Share Exchange Agreement contains certain covenants by each of the parties, to be observed during the period between Closing and Conversion, including covenants regarding: (1) the provision of access to properties, books and personnel; (2) delivery of Onconetix's financial statements; (3) litigation support; (4) Onconetix's public filings; (5) no insider trading; (6) further assurances; (7) public announcements; (8) confidentiality; (9) indemnification of directors and officers and tail insurance; (10) intended tax treatment of the Share Exchange; (11) Section 16 matters and (12) transfer taxes.

The parties agreed to take all necessary actions to cause Onconetix's board of directors immediately after the Stockholder Approval (the Post-Stockholder Approval Buyer Board) to consist of five directors, including: (i) two persons who are designated by Onconetix and reasonably acceptable to Proteomedix; and (ii) three persons who are designated by Proteomedix and reasonably acceptable to Onconetix.

The issuance of the Conversion Shares, amendment of Onconetix's certificate of incorporation to authorize sufficient additional shares of Buyer Common Stock to permit the Conversion and the appointment of the Post-Stockholder Approval Buyer Board requires the approval of Onconetix's stockholders. Onconetix agreed to prepare and file with the Securities and Exchange Commission ("***SEC***") a proxy statement (a "***Proxy Statement***") for the purpose of soliciting proxies from the stockholders of Onconetix for the matters to be acted on at the special meeting of the stockholders of Onconetix. Onconetix also agreed to prepare a registration statement on Form S-1 or Form S-4 in connection with the registration under the Securities Act of 1933, as amended (the "***Securities Act***"), of the issuance of Buyer Securities to be issued under the Share Exchange Agreement and containing a Proxy Statement.

Sellers, Onconetix and Proteomedix agreed to, at the election of Onconetix or upon the request of CFIUS, submit to CFIUS a joint declaration or notice with respect to the Transactions as promptly as practicable, but in no event later than sixty (60) days after the date of the Share Exchange Agreement. The parties, in cooperation with each other, agreed to use reasonable best efforts to take all such actions within their respective powers to obtain the approval of CFIUS ("***CFIUS Approval***"), and, without limiting the foregoing, the parties agreed to, after reasonable negotiation efforts, agree to such requirements or conditions to mitigate any national security concerns as may be requested or required by CFIUS in connection with, or as a condition of, CFIUS Approval, including entering into a mitigation agreement, letter of assurance, or national security agreement, but provided: (1) the parties shall have no obligation to (A) propose, negotiate, commit to or effect, by consent decree, hold separate order, agreement or otherwise, the sale, transfer, license, divestiture or other disposition of, any of the businesses, product lines or assets of Onconetix or any of its affiliates or of the Sellers, (B) terminate existing, or create new, relationships, contractual rights or obligations of Onconetix or its affiliates, (C) effect any other change or restructuring of Onconetix or its affiliates, or (D) otherwise take or commit to take any actions reasonably expected to have a material adverse effect on the operation of the business of the Sellers or that interfere with Onconetix's ability to control Proteomedix or Onconetix's ability to direct the management and policies of the business of the Proteomedix in any material respect; and (2) Proteomedix and the Sellers agreed not take or agree to take any of the foregoing actions without the prior written consent of Onconetix.

The parties agreed to use commercially reasonable best efforts to (i) ensure that the application for Onconetix's change of control ("***Nasdaq Change of Control Application***") is filed with The Nasdaq Stock Market LLC ("***Nasdaq***") and (ii) to respond to any questions from Nasdaq with respect to the Nasdaq Change of Control Application promptly following receipt of such questions, but in no event later than ten (10) business days following receipt of such questions.

During the time between Closing and the Conversion, Onconetix also agreed, and agreed to cause its Subsidiaries, to conduct their respective businesses in the ordinary course of business in all material respects and agreed to covenants regarding operation of their respective businesses, including covenants related to (i) amendments to Onconetix's organizational documents; (ii) recapitalization of Onconetix's equity interests; (iii) issuance of additional securities; (iv) incurrence of additional indebtedness; (v) material changes to tax elections; (vi) amendments or termination of material contracts; (vii) records and books; (viii) establishment of any Subsidiary or entry into a new line of business; (ix) maintenance of insurance policies; (x) revaluation of material assets or material changes in accounting methods, principles or policies except to the extent to comply with U.S. GAAP; (xi) waiver or settlement of any claim, action or proceeding, other than waivers not in excess of $500,000; (xii) acquisition of equity interests or assets, or any other form of business combination, outside of the ordinary course of business; (xiii) capital expenditures in excess of $500,000 individually or $1,000,000 in the aggregate; (xiv) adoption of a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization; (xv) voluntarily incurrence of any liability or obligation in excess of $500,000 individually or $1,000,000 in the aggregate other than pursuant to the terms of a Contract in existence as of the date of the Share Exchange Agreement or entered into in the ordinary course of business, except in connection with a Permitted Financing; (xvi) sale, lease, license or otherwise dispose of any material portion of Onconetix properties, assets or rights; (xvii) entry into any agreement, understanding or arrangement with respect to the voting of Buyer Common Stock, except in connection with a Permitted Financing; (xviii) take any action that would reasonably be expected to significantly delay or impair the obtaining of any Consents of any Governmental Authority to be obtained in connection with this Agreement; or (xix) authorize or agree to do any of the foregoing actions.

"***Permitted Financing***" means one or more debt or equity financing transactions consummated by and funded into Onconetix during the time between Closing and the Conversion resulting in aggregate gross proceeds of no greater than $25 million.

Governing Law

The Share Exchange Agreement is governed by the laws of the State of Delaware.

Terms of the Series B Convertible Preferred Stock

The terms of the Series B Convertible Preferred Stock, as described in the Certificate of Desingation, are as follows:

Voting. The shares of Series B Convertible Preferred Stock carry no voting rights except: (i) with respect to the election of the Proteomedix Director (as described below) and (ii) that the affirmative vote of the holders of a majority of the outstanding shares of Series B Convertible Preferred Stock (the "***Majority Holders***"), acting as a single class, shall be necessary to (A) alter or change adversely the powers, preferences or rights given to the Series B Convertible Preferred Stock, (B) alter or amend the Certificate of Designation, or amend or repeal any provision of, or add any provision to, Onconetix's certificate of incorporation or bylaws, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series B Convertible Preferred Stock, (C) issue further shares of Series B Convertible Preferred Stock or increase or decrease (other than by conversion) the number of authorized shares of Series B Convertible Preferred Stock, or (D) authorize or create any class or series of stock, or issue shares of any class or series of stock, that has powers, preferences or rights senior to the Series B Convertible Preferred Stock

Proteomedix Director. The Majority Holders, voting exclusively and as a separate class, shall be entitled to elect one (1) director of Onconetix. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the Series B Convertible Preferred Stock . If the holders of Series B Convertible Preferred Stock fail to elect a director, then any directorship not so filled shall remain vacant until such time as the holders of the Series B Convertible Preferred Stock elect a person to fill such directorship; and no such directorship may be filled by stockholders of Onconetix other than by the holders of Series B Convertible Preferred Stock. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of Series B Convertible Preferred Stock shall constitute a quorum for the purpose of electing such director.

Redemption. The shares of Series B Convertible Preferred Stock are not redeemable by Onconetix.

Liquidation Preference. Upon a liquidation, dissolution or winding-up of Onconetix, whether voluntary or involuntary (a "***Liquidation***"), the holders of Series B Convertible Preferred Stock shall be entitled to receive out of the assets, whether capital or surplus, of Onconetix the same amount that a holder of Buyer Common Stock would receive if such Holder's Series B Convertible Preferred Stock were fully converted to Buyer Common Stock at the Conversion Ratio (as defined below) plus an additional amount equal to any dividends declared but unpaid to such shares, which amounts shall be paid *pari passu* with all holders of Buyer Common Stock.

Dividends. The holders of the Series B Convertible Preferred Stock shall be entitled to receive, dividends on shares of Series B Convertible Preferred Stock (on an as-if-converted-to-common-stock basis) equal to and in the same form, and in the same manner, as dividends (other than dividends on shares of the Buyer Common Stock payable in the form of Buyer Common Stock) actually paid on shares of the Buyer Common Stock when, as and if such dividends (other than dividends payable in the form of Buyer Common Stock) are paid on shares of the Buyer Common Stock.

Conversion. Following Stockholder Approval, each share of Series B Convertible Preferred Stock shall be converted into shares of Buyer Common Stock (the "***Conversion Shares***") at a ratio of 100 Conversion Shares for each share of Series B Convertible Preferred Stock (the "***Conversion Ratio***"). All shares of Series B Convertible Preferred Stock shall automatically and without any further action required be converted into Conversion Shares at the Conversion Ratio upon the latest date on which (i) Onconetix has received the Stockholder Approval with respect to the issuance of all of the shares of Buyer Common Stock issuable upon Conversion in excess of 20% of the issued and outstanding Buyer Common Stock on the Closing Date and (ii) Onconentix has effected an increase in the number of shares of Buyer Common Stock authorized under its certificate of incorporation, to the extent required to consummate the Transactions.

Cash Settlement. If, at any time after the earlier of the date of the Stockholder Approval or January 1, 2025 (the earliest such date, the "***Cash Settlement Date***"), Onconetix (x) has obtained the Stockholder Approval but fails to or has failed to deliver to a holder certificate or certificates representing the Conversion Shares, or deliver documentation of book entry form of (or cause its transfer agent to electronically deliver such evidence) Conversion Shares on or prior to the fifth business day after the date of the Stockholder Approval, or (y) has failed to obtain the Stockholder Approval, Onconetix shall, in either case, at the request of the holder setting forth such holder's request to cash settle a number of shares of Series B Convertible Preferred Stock , pay to such holder an amount in cash equal to (i) the Fair Value (as defined below) of the shares of Series B Convertible Preferred Stock set forth in such request multiplied by (ii) the Conversion Ratio in effect on the trading day on which the request is delivered to Onconetix, with such payment to be made within two (2) business days from the date of the request by the holder, whereupon, after payment in full thereon by Onconetix, Onconetix's obligations to deliver such shares underlying the request shall be extinguished. "*Fair Value*" of shares shall be fixed with reference to the last reported closing stock price on the principal trading market of the Buyer Common Stock on which the Buyer Common Stock is listed as of the trading day on which the request is delivered to Onconetix.

Certain Adjustments. If Onconetix, at any time while the Series B Convertible Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Buyer Common Stock; (B) subdivides outstanding shares of Buyer Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Buyer Common Stock into a smaller number of shares, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Buyer Common Stock outstanding immediately after such event and of which the denominator shall be the number of shares of Buyer Common Stock outstanding immediately before such event (excluding any treasury shares of the Corporation). If, at any time while the Series B Convertible Preferred Stock is outstanding, either (A) Onconetix effects any merger or consolidation of Onconetix with or into another person or any stock sale to, or other business combination with or into another person (other than such a transaction in which Onconetix is the surviving or continuing entity and holds at least a majority of the Buyer Common Stock after giving effect to the transaction and its Buyer Common Stock is not exchanged for or converted into other securities, cash or property), (B) Onconetix effects any sale, lease, transfer or exclusive license of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by Onconetix or another person) is completed pursuant to which more than 50% of the Buyer Common Stock not held by Onconetix or such person is exchanged for or converted into other securities, cash or property, or (D) Onconetix effects any reclassification of the Buyer Common Stock or any compulsory share exchange pursuant to which the Buyer Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "***Fundamental Transaction***"), then, in connection with such Fundamental Transaction, the holders of Series B Convertible Preferred Stock shall receive in the Fundamental Transaction, the same kind and amount of securities, cash or property that a holder of Buyer Common Stock would receive if such holder's Series B Convertible Preferred Stock were fully converted to Buyer Common Stock, plus an additional amount equal to any dividends declared but unpaid to such shares, which amounts shall be paid *pari passu* with all holders of Buyer Common Stock in the Fundamental Transaction (the "***Alternate Consideration***"). If holders of Buyer Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the holders of Series B Convertible Preferred Stock shall be given the same choice as to the Alternate Consideration it receives in such Fundamental Transaction.

Lock-Up Agreement

Simultaneously with the execution of the Share Exchange Agreement, the Sellers and the Advisor Parties, as shareholders of Proteomedix, entered into Lock-Up Agreements (each, a "***Lock-Up Agreement***"). Pursuant to each Lock-Up Agreement, each signatory thereto will agree not to, during the period commencing from the Closing Date and ending on the 6-month anniversary of the date of Stockholder Approval: (i) lend, offer, pledge, hypothecate, encumber, donate, assign, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, the Exchange Shares or the Conversion Shares, (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Exchange Shares or the Conversion Shares, or (iii) publicly disclose the intention to do any of the foregoing, whether any such transaction described in clauses (i), (ii) or (iii) above is to be settled by delivery of the Exchange Shares or the Conversion Shares or other securities, in cash or otherwise (subject to certain exceptions).

A copy of the form of Lock-Up Agreement is filed as Exhibit 10.1, and is incorporated herein by reference, and the foregoing description of the form of Seller Lock-Up Agreement is qualified in its entirety by reference thereto.

Non-Competition and Non-Solicitation Agreement

Simultaneously with the execution of the Share Exchange Agreement, certain executive officers (each, a "***Management Shareholder***") of Proteomedix each entered into a non-competition and non-solicitation agreement (collectively, the "***Non-Competition and Non-Solicitation Agreements***") with Onconetix. Under the Non-Competition and Non-Solicitation Agreements, each Management Shareholder agreed not to compete with Proteometix, and after the Closing, Onconetix, and their respective affiliates during the three-year period following the Closing and, during such three-year restricted period, not to solicit employees or customers of such entities. Each Non-Competition and Non-Solicitation Agreement also contains customary confidentiality and non-disparagement provisions.

A copy of the form of Non-Competition and Non-Solicitation Agreement is filed as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference, and the foregoing description of the form of Non-Competition and Non-Solicitation Agreement is qualified in its entirety by reference thereto.

Stockholder Support Agreement

Simultaneously with the execution of the Share Exchange Agreement, Onconetix, Proteomedix and certain directors of Onconetix who are stockholders of Onconetix, entered into a Stocholder Support Agreement (the "***Stockholder Support Agreement***"), pursuant to which, among other things, each such stockholder of Buyer has agreed (a) to support the adoption of the Share Exchange Agreement and the approval of the Transactions, subject to certain customary conditions, and (b) not to transfer any of their subject shares (or enter into any arrangement with respect thereto), subject to certain customary conditions.

A copy of the form of Stockholder Support Agreement is filed as Exhibit 10.3 to this Current Report on Form 8-K and is incorporated herein by reference, and the foregoing description of the form Stockholder Support Agreement is qualified in its entirety by reference thereto.

Stockholder Subscription Agreement

In connection with the Transactions, on December 15, 2023, Onconetix entered into a Subscription Agreement (the "***Subscription Agreement***") with the Investor for a private placement of $5.0 million of units (the "***Units***"), each unit comprised of (i) one share of Common Stock and (ii) one pre-funded warrant (collectively, the "***Warrants***") to purchase 0.3 shares of Common Stock at an exercise price of $0.001 per share, for an aggregate purchase price per Unit of $0.25 (the "***Purchase Price***"). Additional shares are issuable to the Investor to the extent the Investor continues to hold Common Stock included in the Units and if the VWAP during the 270 days following closing is less than the Purchase Price, as set forth in the Subscription Agreement.

The offering is expected to close following stockholder approval of the issuance of the Conversion Shares. Within 30 days after closing, Onconetix will file a resale registration statement with the SEC registering the resale of the Common Stock issuable pursuant to the Subscription Agreement and the Warrants.

A copy of the form of Subscription Agreement is filed as Exhibit 10.4 to this Current Report on Form 8-K and is incorporated herein by reference, and the foregoing description of the Subscription Agreement is qualified in its entirety by reference thereto.

Item 3.02 Unregistered Sales of Equity Securities.

The information in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02. The agreement to issue the Exchange Shares to the Sellers and Advisor Parties was made pursuant to the exemption from registration contained in Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Chief Strategy Officer Appointment

On December 15, 2023, Onconetix appointed Christian Brühlmann, 47, as Chief Strategy Officer of Onconetix, effective immediately, to serve until the election and qualification of his successor or his earlier death, resignation or removal.

Mr. Brühlmann co-founded Proteomedix and served as its Chief Financial and Operations Officer from March 2010 until November 2018. Beginning in December 2018, Mr. Brühlmann served as Proteomedix's Chief Business Officer until the consummation of the Share Exchange. Mr. Brühlmann is qualified to serve as Chief Strategy Officer because of his extensive experience with business strategy and familiarity with Proteomedix.

Mr. Brühlmann has no family relationships with any of Onconetix's directors or executive officers, and he is not a party to, and does not have any direct or indirect material interest in, any transaction requiring disclosure under Item 404(a) of Regulation S-K. There are no arrangements or understandings between Mr. Brühlmann and any other persons pursuant to which he was selected as an officer.

The Compensation Committee of the Board (the "***Compensation Committee***") will consider compensatory arrangements for Mr. Brühlmann at a later date.

Chief Science Officer Appointment

On December 15, 2023, Onconetix appointed Ralph Schiess, 45, as Chief Science Officer of Onconetix, effective immediately, to serve until the election and qualification of his successor or his earlier death, resignation, or removal.

Dr. Schiess co-founded Proteomedix in March 2010 and served as its Chief Executive Officer from its inception until December 2019. Dr. Schiess then served as Proteomedix's Chief Scientific Officer from January 2020 to May 2023. Dr. Schiess returned to his role as Chief Executive Officer in June 2023 and served until the consummation of the Share Exchange. Dr. Schiess is qualified to serve as Chief Science Officer because of his extensive experience in the pharmaceutical industry and familiarity with Proteomedix.

Dr. Schiess has no family relationships with any of Onconetix's directors or executive officers, and he is not a party to, and does not have any direct or indirect material interest in, any transaction requiring disclosure under Item 404(a) of Regulation S-K. There are no arrangements or understandings between Dr. Schiess and any other persons pursuant to which he was selected as an officer.

The Compensation Committee will consider compensatory arrangements for Dr. Schiess at a later date.

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

On December 15, 2023, Onconetix filed a Certificate of Amendment to its Amended and Restated Articles of Incorporation with the Delaware Secretary of State (the "***Amendment***"). The Amendment changed the name of Onconetix from "Blue Water Biotech, Inc." to "Onconetix, Inc.," effective immediately (the "**Name Change**"). The Amendment is attached hereto as Exhibit 3.1 and incorporated herein by reference.

On December 1, 2023, the Board approved the Name Change and an amendment to the Company's bylaws to reflect the Name Change, effective as of the Closing Date on December 15, 2023. No other changes were made to the bylaws. A copy of the Fourth Amended and Restated Bylaws reflecting the amendment is attached hereto as Exhibit 3.2 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

2.1	Share Exchange Agreement, dated December 15, 2023, by and among Onconetix, Proteomedix AG, Thomas Meier and the Sellers.
3.1	Certificate of Amendment to Onconetix's Second Amended and Restated Certificate of Incorporation.
3.2	Fourth Amended and Restated Bylaws of Onconetix, Inc.
4.1	Certificate of Designation of Series B Convertible Preferred Stock.
10.1	Form of Lock-Up Agreement, dated as of December 15, 2023, by and among Onconetix and certain stockholders of Proteomedix.
10.2	Form of Non-Competition and Non-Solicitation Agreement, dated as of December 15, 2023, by and among Onconetix and certain stockholders of Proteomedix.
10.3	Form of Stockholder Support Agreement, dated December 15, 2023, by and among Onconetix, Proteomedix, and certain stockholders of Proteomedix.
10.4	Form of Subscription Agreement, dated December 15, 2023, by and among Onconetix, Proteomedix, and the Investor.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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

Onconetix, Inc.

Date: December 21, 2023

By: /s/ Dr. Neil Campbell

Dr. Neil Campbell
Chief Executive Officer

Exhibit 2.1

EXECUTION VERSION
PRIVATE & CONFIDENTIAL

SHARE EXCHANGE AGREEMENT

by and among

BLUE WATER BIOTECH, INC.,

PROTEOMEDIX AG,

THOMAS MEIER AS THE SELLERS' REPRESENTATIVE,

and

THE SHAREHOLDERS OF PROTEOMEDIX AG NAMED HEREIN,

Dated as of December 15, 2023

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Exhibit B	Form of Non-Competition and Non-Solicitation Agreement
Exhibit C	Form of Support Agreement
Exhibit D	Form of Series B Certificate of Designation
Annex I	Sellers

SHARE EXCHANGE AGREEMENT

This SHARE EXCHANGE AGREEMENT (this "***Agreement***") is made and entered into as of December 15, 2023, by and among (i) **Proteomedix AG**, a Swiss Company (the "***Company***"), (ii) **Blue Water Biotech, Inc.**, a Delaware corporation ("***Buyer***"), (iii) each of the holders of outstanding capital stock or Company Convertible Securities (other than Company Stock Options) named on Annex I hereto (collectively, the "***Sellers***") and (iv) Thomas Meier, in the capacity as the representative of Sellers in accordance with the terms and conditions of this Agreement (the "***Sellers' Representative***" and together with the Sellers and the Company, the "***Seller Parties***"). The Company, Buyer, Sellers' Representative and the Sellers are sometimes referred to herein individually as a "***Party***" and, collectively, as the "***Parties***". Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed thereto in Article X hereof.

RECITALS:

WHEREAS, Sellers collectively own 100% of the issued and outstanding equity interests of the Company;

WHEREAS, subject to and upon the terms and conditions set forth in this Agreement, Buyer desires to purchase from Sellers, and Sellers wish to sell to Buyer, all of the issued and outstanding Company Shares in exchange for newly issued shares of common stock and newly issued shares of preferred stock of Buyer, subject to the terms and conditions set forth herein (the "***Share Exchange***" and the other transactions contemplated by this Agreement, the "***Transactions***");

WHEREAS, the Parties desire that following the Transactions (i) the Sellers will own a majority of the issued and outstanding shares of Buyer Common Stock (as defined below) as measured based on the number of shares of Buyer Common Stock outstanding immediately prior to the Closing (as defined below) and (ii) Buyer will own 100% of the issued and outstanding equity interests of the Company;

WHEREAS, simultaneously with the execution and delivery of this Agreement, (a) the Sellers are entering into lock-up agreements with Buyer and the Company, in the form attached hereto as Exhibit A (the "***Lock-Up Agreements***"), which Lock-Up Agreements shall become effective as of the Closing and provide that Sellers shall not transfer the Common Shares (as defined below) and Preferred Shares (as defined below) from the Closing until (6) months following the date of the Stockholder Approval and (b) each of Dr. Ralph Schiess and Christian Brühlmann (together, the "***Management Shareholders***") are entering into non-competition and non-solicitation agreements in favor of Buyer and the Company, in the form attached hereto as Exhibit B (the "***Non-Competition and Non-Solicitation Agreements***"), which Non-Competition and Non-Solicitation Agreements shall become effective as of the Closing;

WHEREAS, the board of directors of Buyer (the "***Buyer Board***") has (a) determined that it is fair, advisable and in the best interests of Buyer and its stockholders to enter into this Agreement and consummate the Transactions, (b) approved the execution, delivery and performance by Buyer of this Agreement and the consummation of the Transactions, all upon the terms and subject to the conditions set forth herein and (c) determined to recommend to the Buyer's stockholders a vote in favor of the Stockholder Approval Matters at a special meeting of Buyer's stockholders to be called and held for such purpose; and

WHEREAS, the board of directors of the Company has (a) determined that it is fair, advisable and in the best interests of the Company and its shareholders to enter into this Agreement and consummate the Transactions, and (b) approved the execution, delivery and performance by the Company of this Agreement and the consummation of the Transactions, all upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises set forth above, and the representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE I
SHARE EXCHANGE

1.1 Exchange of the Company Shares. At the Closing, upon the terms and subject to the conditions of this Agreement, the Sellers shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase, acquire and accept from the Sellers, all of the issued and outstanding equity interests of the Company (collectively, the "***Purchased Shares***"), free and clear of all Liens (other than those imposed by applicable securities Laws and those incurred by Buyer).

1.2 Exchange Consideration.

(a) At the Closing, upon the terms and subject to the conditions of this Agreement, and in full payment for the Purchased Shares, Buyer shall issue and register: (i) in the name of the creditors of the Company set forth on Annex I hereto (the "***Company Creditors***") such number of shares of Buyer Common Stock and Buyer Preferred Stock set forth opposite each Company Creditor's name (the "***Creditor Shares***"), and (ii) in the name of the Sellers such number of shares of Buyer Common Stock (the "***Common Shares***") and such number of shares of Buyer Preferred Stock (the "***Preferred Shares***" and together with the Common Shares and the Creditor Shares, the "***Exchange Shares***") set forth opposite each Seller's name on Annex I hereto. The aggregate value of the Exchange Shares at the Closing shall be equal to Seventy-Five Million U.S. Dollars ($75,000,000) (the "***Exchange Consideration***") less the value of the Company Shares for which the Company Stock Options are exercisable immediately prior to the Closing and less the value of the Creditor Shares. Each Company Share shall be exchanged for the right to receive a number of Exchange Shares determined in accordance with the terms of this Agreement. Following the Share Exchange, each Seller shall cease to have any other rights in and to the Company.

(b) The Preferred Shares shall have the rights, preferences and privileges as set forth in a Certificate of Designation, in the form attached hereto as Exhibit D (the "***Series B Certificate of Designation***), to be filed with the Secretary of State of the State of Delaware on or prior to the Closing, and shall automatically convert into shares of Buyer Common Stock as provided in the Certificate of Designation.

1.3 Surrender of the Company Securities and Disbursement of Exchange Consideration.

(a) At the Closing, Buyer shall cause the Exchange Shares to be issued to the Sellers in exchange for their Company Shares in accordance with each Seller's portion of the Exchange Consideration.

(b) At the Closing, each Seller will transfer to Buyer their Company Shares, by endorsement in blank of any certificates representing the Company Shares ("***Company Certificates***") or, if there are no Company Certificates, (ii) assignment declarations reasonable acceptable to Buyer.

(c) Notwithstanding anything to the contrary contained herein, no fraction of a share of Buyer Common Stock will be issued by Buyer by virtue of this Agreement or the Transactions, and each Person who would otherwise be entitled to a fraction of a share of Buyer Common Stock (after aggregating all fractional shares of Buyer Common Stock that would otherwise be received by such Person) shall instead have the number of shares of Buyer Common Stock issued to such Person rounded down in the aggregate to the nearest whole share of Buyer Common Stock.

1.4 Treatment of Company Convertible Securities.

(a) Prior to the Share Exchange, the holders of Company Convertible Securities other than the Company Stock Options shall convert all of their rights to receive Company Shares pursuant to such Company Convertible Securities for Company Shares at the applicable conversion ratio as set forth in the Company Convertible Securities (the "***Company Convertible Securities Conversion***"). Following the Company Convertible Securities Conversion, all Company Convertible Securities, other than the Company Stock Options shall be waived, canceled or terminated, as applicable, shall no longer be outstanding and shall cease to exist, no payment or distribution shall be made with respect thereto and each holder of Company Convertible Securities shall thereafter cease to have any rights with respect to such securities.

(b) At the Closing, each Company Stock Option that is outstanding under any of the equity incentive plans of the Company (collectively, the "***Company Equity Plans***") immediately before the Closing, whether vested or unvested, shall remain outstanding until exchanged pursuant to Section 6.17(b).

1.5 Seller Consent. Each Seller, as a shareholder or other security holder of the Company, hereby approves, authorizes and consents to the Company's execution and delivery of this Agreement and the Ancillary Documents to which it is or is required to be a party or otherwise bound, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby. Each Seller acknowledges and agrees that the consents set forth herein are intended and shall constitute such consent of the Sellers as may be required (and shall, if applicable, operate as a written shareholder resolution of the Company) pursuant to the Company's Organizational Documents, any other agreement in respect of the Company to which any Seller is a party or bound and all applicable Laws.

1.6 Termination of Certain Agreements. Without limiting the provisions of Section 8.1, the Company and the Sellers hereby agree that, effective at the Closing, (a) any shareholders', voting or similar agreement among the Company and any of the Sellers or among the Sellers with respect to the Company's share capital, and (b) any registration rights agreement between the Company and its shareholders, in each case of clauses (a) and (b), shall automatically, and without any further action by any of the Parties, terminate in full and become null and void and of no further force and effect. Further, each Seller and the Company hereby waive any obligations of the parties under the Company's Organizational Documents or any agreement described in clause (a) above with respect to the Transactions and the Ancillary Documents, and any failure of the Parties to comply with the terms thereof in connection with the Transactions.

ARTICLE II
CLOSING

2.1 Closing. The consummation of the Transactions (the "***Closing***") shall take place at the offices of Ellenoff Grossman & Schole LLP ("***EGS***"), 1345 Avenue of the Americas, New York, New York 10105, remotely via the electronic exchange of signatures, promptly (but in no event later than two (2) Business Days) following the satisfaction or waiver of the conditions to Closing set forth in this Agreement at 10:00 a.m. local time, or at such other date, time or place as Buyer and the Company may agree in writing (the date and time at which the Closing is actually held being the "***Closing Date***"). Closing signatures may be transmitted by e-mailed PDF files or by facsimile.

2.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Secretary Certificates. The Company shall have delivered to Buyer a certificate from its secretary or other executive officer certifying as to the validity and effectiveness of, and attaching, (A) copies of its Organizational Documents as in effect as of the Closing Date (immediately prior to the Closing), (B) the resolutions of its board of directors authorizing and approving the execution, delivery and performance of this Agreement and each Ancillary Document to which it is a party or bound, and the consummation of the Transactions, and (C) the incumbency of its officers authorized to execute this Agreement or any Ancillary Document to which it is or is required to be a party or otherwise bound.

(b) Good Standing. The Company shall have delivered to Buyer an extract from the register of commerce of the Caton Zurich, Switzerland, issued as of a date no earlier than thirty (30) days prior to the Closing Date.

(c) Lock-Up Agreement. Each Seller shall have delivered to Buyer the Lock-Up Agreement, in the form attached as Exhibit A hereto, duly executed by such Seller.

(d) Non-Competition and Non-Solicitation Agreement. The Company shall have delivered to Buyer the Non-Competition and Non-Solicitation Agreement, in the form attached as Exhibit B hereto, duly executed by the Management Shareholders.

(e) Consents. The Company shall have delivered to Buyer the required Consents listed in Schedule 2.2(e).

(f) Assignment Declaration. The Company shall have delivered to Buyer original copies signed in wet ink of the assignment declarations regarding the Purchased Shares in a form satisfactory to Buyer.

(g) Board Approval and Shareholder Registration. The Company shall have delivered to Buyer a resolution of the board of directors approving the transfer of the Purchased Shares to Buyer and the registration of Buyer as shareholder with voting rights with regard to the Purchased Shares in the share register of the Company.

(h) Beneficial Ownership Register. The Company shall have delivered to Buyer a copy of the share and beneficial owner register of the Company showing the Buyer as shareholder with voting rights with regard to the Purchased Shares in the share register of the Company and the beneficial owner as notified by Buyer to the Company (if any) as the beneficial owner of the Purchased Shares.

2.3 Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by the Company, at or prior to the Closing, of each of the following conditions:

(a) Secretary Certificates. Buyer shall have delivered to the Company a certificate from its secretary or other executive officer certifying as to, and attaching, (A) copies of Buyer's Organizational Documents as in effect as of the Closing Date (immediately prior to the Closing), (B) the resolutions of Buyer's board of directors authorizing and approving the execution, delivery and performance of this Agreement and each of the Ancillary Documents to which it is a party or by which it is bound, and the consummation of the transactions contemplated hereby and thereby, and (C) the incumbency of officers authorized to execute this Agreement or any Ancillary Document to which Buyer is or is required to be a party or otherwise bound.

(b) Good Standing. Buyer shall have delivered to the Company a good standing certificate (or similar documents applicable for such jurisdictions) for Buyer certified as of a date no earlier than thirty (30) days prior to the Closing Date from the proper Governmental Authority of Buyer's jurisdiction of organization and from each other jurisdiction in which Buyer is qualified to do business as a foreign entity as of the Closing, in each case to the extent that good standing certificates or similar documents are generally available in such jurisdictions.

(c) Listing. Buyer shall have submitted an application for the listing on the Nasdaq of the shares of Buyer Common Stock to be issued at Closing under this Agreement, shall have been notified that such application has been successfully submitted, and shall have not been contacted by the Nasdaq with respect to any compliance issues with respect to such application.

(d) Private Placement. Buyer shall have delivered to the Company Subscription Agreements, in form and substance reasonably acceptable to the Company (the "***Subscription Agreements***"), executed by Buyer and the Private Placement Investors, for a Private Placement Investment for an aggregate amount equal to or greater than five million dollars ($5,000,000).

(e) Fairness Opinion. Buyer Board shall have received the written opinion (or an oral opinion to be confirmed in writing) from a reputable independent investment banking firm or other independent financial advisory firm that regularly renders fairness opinions with respect to the type of business that the Company conducts, to the effect that, as of the date of such opinion and based upon and subject to the various qualifications and assumptions set forth therein, the consideration to be paid by Buyer pursuant to this Agreement is fair from a financial point of view to the stockholders of Buyer.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in (i) the disclosure schedules delivered by Buyer to the Company and the Sellers on the date hereof (the "***Buyer Disclosure Schedules***"), the Section numbers of which are numbered to correspond to the Section numbers of this Agreement to which they refer, or (ii) the SEC Reports (as defined below) that are available on the SEC's website through EDGAR, Buyer represents and warrants to the Seller Parties as follows:

3.1 Organization and Standing. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Buyer is duly qualified or licensed and in good standing to do business in each jurisdiction in which the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary. Schedule 3.1 lists all jurisdictions in which any Buyer Company does Business. Buyer has heretofore made available to the Company accurate and complete copies of its Organizational Documents, each as currently in effect. Buyer is not in violation of any provision of its Organizational Documents.

3.2 Authorization; Binding Agreement. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Document to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, subject to obtaining the Stockholder Approval (including the Conversion Approval). The execution and delivery of this Agreement and each Ancillary Document to which it is a party and the consummation of the transactions contemplated hereby and thereby (a) have been duly and validly authorized by the board of directors of Buyer and (b) other than the Stockholder Approval, no other corporate proceedings, on the part of Buyer are necessary to authorize the execution and delivery of this Agreement and each Ancillary Document to which it is a party or to consummate the transactions contemplated hereby and thereby. This Agreement has been, and each Ancillary Document to which Buyer is a party shall be when delivered, duly and validly executed and delivered by Buyer and, assuming the due authorization, execution and delivery of this Agreement and such Ancillary Documents by the other parties hereto and thereto, constitutes, or when delivered shall constitute, the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except to the extent that enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization and moratorium laws and other laws of general application affecting the enforcement of creditors' rights generally or by any applicable statute of limitation or by any valid defense of set-off or counterclaim, and the fact that equitable remedies or relief (including the remedy of specific performance) are subject to the discretion of the court from which such relief may be sought (collectively, the "***Enforceability Exceptions***").

3.3 Governmental Approvals. Except as otherwise described in Schedule 3.3, no Consent of or with any Governmental Authority on the part of Buyer is required to be obtained or made in connection with the execution, delivery or performance by Buyer of this Agreement and each Ancillary Document to which it is a party or the consummation by Buyer of the transactions contemplated hereby and thereby, other than (a) pursuant to any Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade ("***Antitrust Laws***"), (b) such filings as are expressly contemplated by this Agreement, (c) any filings required with Nasdaq or the SEC with respect to the Transactions, (d) applicable requirements, if any, of the Securities Act, the Exchange Act, and/or any state "blue sky" securities Laws, and the rules and regulations thereunder, and (e) where the failure to obtain or make such Consents or to make such filings or notifications would not reasonably be expected to have a Material Adverse Effect on Buyer.

3.4 Non-Contravention. Except as otherwise described in Schedule 3.4, the execution and delivery by Buyer of this Agreement and each Ancillary Document to which it is a party, the consummation by Buyer of the transactions contemplated hereby and thereby, and the compliance by Buyer with any of the provisions hereof and thereof, shall not (a) conflict with or violate any provision of Buyer's Organizational Documents, (b) subject to obtaining the Consents from Governmental Authorities referred to in Section 3.3 hereof, and the waiting periods referred to therein having expired, and any condition precedent to such Consent or waiver having been satisfied, conflict with or violate any Law, Order or Consent applicable to Buyer or any of its properties or assets, or (c) (i) violate, conflict with or result in a breach of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination, withdrawal, suspension, cancellation or modification of, (iv) accelerate the performance required by Buyer under, (v) result in a right of termination or acceleration under, (vi) give rise to any obligation to make payments or provide compensation under, (vii) result in the creation of any Lien upon any of the properties or assets of Buyer under, (viii) give rise to any obligation to obtain any third party Consent or provide any notice to any Person under or (ix) give any Person the right to declare a default, exercise any remedy, claim a rebate, chargeback, penalty or change in delivery schedule, accelerate the maturity or performance, cancel, terminate or modify any right, benefit, obligation or other term under, any of the terms, conditions or provisions of any Buyer Material Contract, except for any deviations from the foregoing clause (c) that would not reasonably be expected to have a Material Adverse Effect on Buyer.

3.5 Capitalization.

(a) Buyer is authorized to issue 250,000,000 shares of common stock, $0.00001 par value per share, and 10,000,000 shares are preferred stock, par value $0.00001 per share. The issued and outstanding Buyer Securities as of the date of this Agreement are set forth on Schedule 3.5(a). All of the issued and outstanding shares of Buyer Common Stock are duly authorized, validly issued, fully paid and non-assessable and are not subject to or issued in violation of any purchase option, right of first refusal, preemptive right, subscription right or any similar right under any provision of applicable Law, Buyer's Organizational Documents or any Contract to which Buyer is a party. None of the outstanding Buyer Securities have been issued in violation of any applicable securities Laws.

(b) Except as set forth in Schedule 3.5(b), there are no (i) outstanding options, warrants, puts, calls, convertible securities, preemptive or similar rights, (ii) bonds, debentures, notes or other Indebtedness having general voting rights or that are convertible or exchangeable into securities having such rights or (iii) subscriptions or other rights, agreements, arrangements, Contracts or commitments of any character (other than this Agreement and the Ancillary Documents), (A) relating to the issued or unissued securities of Buyer or (B) obligating Buyer to issue, transfer, deliver or sell or cause to be issued, transferred, delivered, sold or repurchased any options or shares or securities convertible into or exchangeable for such securities, or (C) obligating Buyer to grant, extend or enter into any such option, warrant, call, subscription or other right, agreement, arrangement or commitment for such capital shares. There are no outstanding obligations of Buyer to repurchase, redeem or otherwise acquire any shares of Buyer or to provide funds to make any investment (in the form of a loan, capital contribution or otherwise) in any Person. Except as set forth in Schedule 3.5(b), there are no stockholders' agreements, voting trusts or other agreements or understandings to which Buyer is a party with respect to the voting of any shares of Buyer.

(c) All Indebtedness of Buyer as of the date of this Agreement is disclosed on Schedule 3.5(c). Except as set forth on Schedule 3.5(c), no Indebtedness of Buyer contains any restriction upon: (i) the prepayment of any such Indebtedness, (ii) the incurrence of Indebtedness by Buyer, (iii) the ability of Buyer to grant any Lien on its properties or assets, or (iv) the consummation of the Transactions.

3.6 Subsidiaries. Schedule 3.6 sets forth the name of each Subsidiary of Buyer, and with respect to each Subsidiary, (a) its jurisdiction of organization, (b) its authorized shares or other equity interests (if applicable), and (c) the number of issued and outstanding shares or other equity interests and the record holders and beneficial owners thereof. All of the outstanding equity securities of each Subsidiary of Buyer are duly authorized and validly issued, fully paid and non-assessable (if applicable), and were offered, sold and delivered in compliance with all applicable securities Laws, and owned by one or more of the Buyer Companies, free and clear of all Liens (other than those, if any, imposed by such Subsidiary's Organizational Documents). There are no Contracts to which Buyer or any of its Affiliates is a party or bound with respect to the voting (including voting trusts or proxies) of the equity interests of any Subsidiary of Buyer other than the Organizational Documents of any such Subsidiary. There are no outstanding or authorized options, warrants, rights, agreements, subscriptions, convertible securities or commitments to which any Subsidiary of Buyer is a party or which are binding upon any Subsidiary of Buyer providing for the issuance or redemption of any equity interests of any Subsidiary of Buyer. There are no outstanding equity appreciation, phantom equity, profit participation or similar rights granted by any Subsidiary of Buyer. No Subsidiary of Buyer has any limitation, whether by Contract, Order or applicable Law, on its ability to make any distributions or dividends to its equity holders or repay any debt owed to another Buyer Company. Except for the equity interests of the Subsidiaries listed on Schedule 3.6, Buyer does not own or have any rights to acquire, directly or indirectly, any equity interests of, or otherwise Control, any Person. Except as set forth on Schedule 3.6, no Buyer Company is a participant in any joint venture, partnership or similar arrangement. There are no outstanding contractual obligations of a Buyer Company to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person.

3.7 SEC Filings and Buyer Financials.

(a) Except as set forth on Schedule 3.7, Buyer, since January 1, 2021, has filed all forms, reports, schedules, statements, registration statements, prospectuses and other documents required to be filed or furnished by Buyer with the SEC under the Securities Act and/or the Exchange Act, together with any amendments, restatements or supplements thereto, and will file all such forms, reports, schedules, statements and other documents required to be filed subsequent to the date of this Agreement. Except to the extent available on the SEC's web site through EDGAR, Buyer has delivered to the Company copies in the form filed with the SEC of all of the following: (i) Buyer's annual reports on Form 10-K for each fiscal year of Buyer beginning with the first year Buyer was required to file such a form, (ii) Buyer's quarterly reports on Form 10-Q for each fiscal quarter that Buyer filed such reports to disclose its quarterly financial results in each of the fiscal years of Buyer referred to in clause (i) above, (iii) all other forms, reports, registration statements, prospectuses and other documents (other than preliminary materials) filed by Buyer with the SEC since the beginning of the first fiscal year referred to in clause (i) above (the forms, reports, registration statements, prospectuses and other documents referred to in clauses (i), (ii) and (iii) above, whether or not available through EDGAR, are referred to herein collectively as the "***SEC Reports***"), and (iv) all certifications and statements required by (A) Rules 13a-14 or 15d-14 under the Exchange Act, and (B) 18 U.S.C. §1350 (Section 906 of SOX) with respect to any report referred to in clause (i) above (collectively, the "***Public Certifications***"). The SEC Reports (x) were prepared in all material respects in accordance with the requirements of the Securities Act and the Exchange Act, as the case may be, and the rules and regulations thereunder, and (y) did not, as of their respective effective dates (in the case of SEC Reports that are registration statements filed pursuant to the requirements of the Securities Act) and at the time they were filed with the SEC (in the case of all other SEC Reports) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The Public Certifications are each true as of their respective dates of filing. As used in this Section 3.7, the term "file" shall be broadly construed to include any manner permitted by SEC rules and regulations in which a document or information is furnished, supplied or otherwise made available to the SEC. As of the date of this Agreement, (A) the Buyer Common Stock is listed on Nasdaq, (B) there are no Actions pending or, to the Knowledge of Buyer, threatened, against Buyer by the Financial Industry Regulatory Authority with respect to any intention by such entity to suspend, prohibit or terminate the quoting of such Buyer Securities on Nasdaq and (C) such Buyer Securities are in compliance with all of the applicable corporate governance rules of Nasdaq.

(b) The financial statements and notes of Buyer contained or incorporated by reference in the SEC Reports (the "***Buyer Financials***"), fairly present in all material respects the financial position and the results of operations, changes in shareholders' equity, and cash flows of Buyer at the respective dates of and for the periods referred to in such financial statements, all in accordance with (i) GAAP methodologies applied on a consistent basis throughout the periods involved and (ii) Regulation S-X or Regulation S-K, as applicable (except as may be indicated in the notes thereto and for the omission of notes and audit adjustments in the case of unaudited quarterly financial statements to the extent permitted by Regulation S-X or Regulation S-K, as applicable).

(c) Buyer has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 and paragraph (e) of Rule 15d-15 under the Exchange Act) as required by Rules 13a-15 and 15d-15 under the Exchange Act. Buyer's disclosure controls and procedures are designed to ensure that all information (both financial and non-financial) required to be disclosed by Buyer in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to Buyer's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of SOX. Buyer's management has completed an assessment of the effectiveness of Buyer's disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable SEC Report that is a periodic report on Form 10-K or Form 10-Q, or any amendment thereto, its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation.

3.8 Absence of Certain Changes. Since January 1, 2023, except as set forth on Schedule 3.8, each Buyer Company has conducted its business only in the ordinary course of business consistent with past practice and not been subject to a Material Adverse Effect.

3.9 Compliance with Laws. Except as set forth on Schedule 3.9, no Buyer Company is or has been in material conflict or material non-compliance with, or in material default or violation of, nor has any Buyer Company received, since January 1, 2021, any written or, to the Knowledge of Buyer, oral notice of any material conflict or non-compliance with, or material default or violation of, any applicable Laws by which it or any of its properties, assets, employees, business or operations are or were bound or affected.

3.10 Permits. Each Buyer Company (and its employees who are legally required to be licensed by a Governmental Authority in order to perform his or her duties with respect to his or her employment with any Buyer Company) holds all Permits necessary to lawfully conduct its business as presently conducted and as currently contemplated to be conducted, and to own, lease and operate its assets and properties (collectively, the "***Buyer Permits***") except where the failure to have any of such Buyer Permits has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Buyer has made available to the Company true, correct and complete copies of all Buyer Permits material to Buyer's business, all of which material Buyer Permits are listed on Schedule 3.10. All of the Buyer Permits are in full force and effect, and no suspension or cancellation of any of the Buyer Permits is pending or, to Buyer's Knowledge, threatened. No Buyer Company is in violation in any material respect of the terms of any Buyer Permit, and no Buyer Company has received any written or, to the Knowledge of Buyer, oral notice of any Actions relating to the revocation or modification of any Buyer Permit.

3.11 Litigation. Except as described on Schedule 3.11, there is no (a) Action of any nature currently pending or, to Buyer's Knowledge, threatened, nor is there any reasonable basis for any Action to be made (and no such Action has been brought or, to Buyer's Knowledge, threatened since January 1, 2021); or (b) Order now pending or outstanding or that was rendered by a Governmental Authority since January 1, 2021, in either case of (a) or (b) by or against any Buyer Company, its current or former directors or officers (provided, that any litigation involving the directors or officers of a Buyer Company must be related to Buyer Company's business, equity securities or assets), its business, equity securities or assets. The items listed on Schedule 3.11, if finally determined adverse to the Buyer Companies, will not have, either individually or in the aggregate, a Material Adverse Effect upon any Buyer Company. Since January 1, 2021, none of the current or former officers, senior management or directors of any Buyer Company have been charged with, indicted for, arrested for, or convicted of any felony or any crime involving fraud.

3.12 Material Contracts.

(a) Schedule 3.12(a) sets forth a true, correct and complete list of, and Buyer has made available to the Company (including written summaries of oral Contracts, true correct and complete copies of, each Contract to which any Buyer Company is a party or by which any Buyer Company, or any of its properties or assets are bound or affected (each Contract required to be set forth on Schedule 3.12(a), a "***Buyer Material Contract***") that:

(i) contains covenants that limit the ability of any Buyer Company (A) to compete in any line of business or with any Person or in any geographic area or to sell, or provide any service or product or solicit any Person, including any non-competition covenants, employee and customer non-solicit covenants, exclusivity restrictions, rights of first refusal or most-favored pricing clauses or (B) to purchase or acquire an interest in any other Person;

(ii) involves any joint venture, profit-sharing, partnership, limited liability company or other similar agreement or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture;

(iii) involves any exchange-traded, over-the-counter or other swap, cap, floor, collar, futures contract, forward contract, option or other derivative financial instrument or Contract, based on any commodity, security, instrument, asset, rate or index of any kind or nature whatsoever, whether tangible or intangible, including currencies, interest rates, foreign currency and indices;

(iv) evidences Indebtedness (whether incurred, assumed, guaranteed or secured by any asset) of any Buyer Company having an outstanding principal amount in excess of $1,000,000;

(v) involves the acquisition or disposition, directly or indirectly (by merger or otherwise), of assets with an aggregate value in excess of $100,000 (other than in the ordinary course of business consistent with past practice) or shares or other equity interests of any Buyer Company or another Person;

(vi) relates to any merger, consolidation or other business combination with any other Person or the acquisition or disposition of any other entity or its business or material assets or the sale of any Buyer Company, its business or material assets;

(vii) by its terms, individually or with all related Contracts, calls for aggregate payments or receipts by the Buyer Companies under such Contract or Contracts of at least $250,000 per year or $500,000 in the aggregate (other than each employment, management, service or consulting agreement);

(viii) is with any Buyer Top Vendor;

(ix) obligates the Buyer Companies to provide continuing indemnification or a guarantee of obligations of a third party after the date hereof in excess of $100,000;

(x) is between any Buyer Company and any directors, officers or employees of a Buyer Company (other than at-will employment arrangements and restrictive covenants agreements with employees entered into in the ordinary course of business consistent with past practice), including all non-competition, severance and indemnification agreements, or any Related Person;

(xi) obligates the Buyer Companies to make any capital commitment or expenditure in excess of $250,000 (including pursuant to any joint venture);

(xii) relates to a material settlement under which any Buyer Company has outstanding obligations (other than customary confidentiality obligations); or

(xiii) provides another Person (other than another Buyer Company or any manager, director or officer of any Buyer Company) with a power of attorney.

(b) Except as disclosed in Schedule 3.12(b), with respect to each Buyer Material Contract: (i) such Buyer Material Contract is valid and binding and enforceable in all respects against the Buyer Company party thereto and, to the Knowledge of Buyer, each other party thereto, and is in full force and effect (except, in each case, as such enforcement may be limited by the Enforceability Exceptions); (ii) the consummation of the Transactions will not affect the validity or enforceability of any Buyer Material Contract; (iii) no Buyer Company is in breach or default in any material respect, and no event has occurred that with the passage of time or giving of notice or both would constitute a material breach or default by any Buyer Company, or permit termination or acceleration by the other party thereto, under such Buyer Material Contract; (iv) to the Knowledge of Buyer, no other party to such Buyer Material Contract is in breach or default in any material respect, and no event has occurred that with the passage of time or giving of notice or both would constitute such a material breach or default by such other party, or permit termination or acceleration by any Buyer Company, under such Buyer Material Contract; (v) no Buyer Company has received written or, to the Knowledge of Buyer, oral notice of an intention by any party to any such Buyer Material Contract to terminate such Buyer Material Contract or amend the terms thereof, other than modifications in the ordinary course of business that do not adversely affect any Buyer Company in any material respect; and (vi) no Buyer Company has waived any rights under any such Buyer Material Contract.

3.13 Intellectual Property.

(a) Schedule 3.13(a)(i) sets forth: (i) all Patents and Patent applications, Trademarks and service mark registrations and applications, Copyright registrations and applications and registered Internet Assets owned or licensed by a Buyer Company or otherwise used or held for use by a Buyer Company in which a Buyer Company is the owner, applicant or assignee ("***Buyer Registered IP***"), specifying as to each item, as applicable: (A) the nature of the item, including the title, (B) the owner of the item, (C) the jurisdictions in which the item is issued or registered or in which an application for issuance or registration has been filed and (D) the issuance, registration or application numbers and dates; and (ii) all material unregistered Intellectual Property owned or purported to be owned by a Buyer Company. Schedule 3.13(a)(ii) sets forth all Intellectual Property licenses, sublicenses and other agreements or permissions ("***Buyer IP Licenses***") (other than "shrink wrap," "click wrap," and "off the shelf" Software agreements and other agreements for Software commercially available on reasonable terms to the public generally (collectively, "***Off-the-Shelf Software***"), which are not required to be listed, although such licenses are "Buyer IP Licenses" as that term is used herein), under which a Buyer Company is a licensee or otherwise is authorized to use or practice any Intellectual Property. Each Buyer Company owns, free and clear of all Liens (other than Permitted Liens), has valid and enforceable rights in, and has the unrestricted right to use, sell, license, transfer or assign, all material Intellectual Property currently used or held for use by such Buyer Company, and previously used by such Buyer Company, except for the Intellectual Property that is the subject of Buyer IP Licenses. Except as set forth on Schedule 3.13(a)(iii), all Buyer Registered IP is owned exclusively by the applicable Buyer Company without obligation to pay royalties, licensing fees or other fees, or otherwise account to any third party with respect to such Buyer Registered IP.

(b) Each Buyer Company has a valid and enforceable license to use all Intellectual Property that is the subject of the Buyer IP Licenses applicable to such Buyer Company. Each Buyer Company has performed all material obligations imposed on it in Buyer IP Licenses, has made all payments required to date, and such Buyer Company is not, nor, to the Knowledge of Buyer, is any other party thereto, in material breach or material default thereunder, nor, to the Knowledge of Buyer, has any event occurred that with notice or lapse of time or both would constitute a default thereunder. The continued use by the Buyer Companies of the Intellectual Property that is the subject of Buyer IP Licenses in the same manner that it is currently being used is not restricted by any applicable license of any Buyer Company. All registrations for Copyrights, Patents, Trademarks and Internet Assets that are owned by or exclusively licensed to any Buyer Company are valid and in force, and all applications to register any Copyrights, Patents and Trademarks are pending and in good standing, all without challenge of any kind.

(c) No Action is pending or, to Buyer's Knowledge, threatened against a Buyer Company that challenges the validity, enforceability, ownership, or right to use, sell, license or sublicense any Intellectual Property currently owned, licensed, used or held for use by the Buyer Companies. No Buyer Company has received any written notice or claim asserting or suggesting that any infringement, misappropriation, violation, dilution or unauthorized use of the Intellectual Property of any other Person is or may be occurring or has or may have occurred (including any demands or offers to license any Intellectual Property rights from a third party), as a consequence of the business activities of any Buyer Company, nor to the Knowledge of Buyer is there a reasonable basis therefor. There are no Orders to which any Buyer Company is a party or its otherwise bound that (i) restrict the rights of a Buyer Company to use, transfer, license or enforce any Intellectual Property owned by a Buyer Company, (ii) restrict the conduct of the business of a Buyer Company in order to accommodate a third Person's Intellectual Property, or (iii) grant any third Person any right with respect to any Intellectual Property owned by a Buyer Company. To Buyer's Knowledge, no Buyer Company is currently infringing, or has, in the past, infringed, misappropriated or violated any Intellectual Property of any other Person in any material respect in connection with the ownership, use or license of any Intellectual Property owned or purported to be owned by a Buyer Company or, to the Knowledge of Buyer, otherwise in connection with the conduct of the respective businesses of the Buyer Companies. To Buyer's Knowledge, no third party is infringing upon, has misappropriated or is otherwise violating any Intellectual Property owned, licensed by, licensed to, or otherwise used or held for use by any Buyer Company ("***Buyer IP***") in any material respect. No Buyer Company has received any opinion of counsel that any product or service provided or distributed in the operation of the businesses thereof, or the conduct of such business, currently or in the past, infringes any Intellectual Property right of another Person or any opinion of counsel otherwise regarding the right to practice any product or service in connection with such businesses.

(d) All employees and independent contractors of a Buyer Company have assigned to the Buyer Companies all Intellectual Property developed by such employees and independent contractors in the performance of services for a Buyer Company by such Persons other than to the extent ownership of such Intellectual Property would otherwise vest in the applicable the Buyer Company by operation of law. No current or former officers, employees or independent contractors of a Buyer Company have claimed any ownership interest in any Intellectual Property owned by a Buyer Company. To the Knowledge of Buyer, there has been no violation of a Buyer Company's policies or practices related to protection of Buyer IP or any confidentiality or nondisclosure Contract relating to the Intellectual Property owned by a Buyer Company. To Buyer's Knowledge, none of the employees of any Buyer Company is obligated under any Contract, or subject to any Order, that would materially interfere with the use of such employee's best efforts to promote the interests of the Buyer Companies, or that would materially conflict with the business of any Buyer as presently conducted or contemplated to be conducted. Each Buyer Company has taken reasonable security measures in order to protect the secrecy, confidentiality and value of the material Buyer IP to the extent such Buyer IP derives value from the secrecy and/or confidentiality thereof.

(e) To the Knowledge of Buyer, no Person has obtained unauthorized access to confidential third-party information and data in the possession of a Buyer Company, nor has there been any other material compromise of the security, confidentiality or integrity of such information or data. To Buyer's Knowledge, each Buyer Company has complied with all applicable Laws relating to privacy, personal data protection, and the collection, processing and use of personal information and its own privacy policies and guidelines. To Buyer's Knowledge, the operation of the business of the Buyer Companies has not and does not violate any right to privacy or publicity of any third party, or constitute unfair competition or trade practices under applicable Law.

(f) The consummation of any of the Transactions will not result in the material breach, material modification, cancellation, termination, suspension of, or acceleration of any payments with respect to, or release of source code because of (i) any Contract providing for the license or other use of Intellectual Property owned by a Buyer Company, or (ii) any Buyer IP License. Following the Closing, Buyer shall be permitted to exercise, directly or indirectly through its Subsidiaries, all of the Buyer Companies' rights under such Contracts or Buyer IP Licenses to the same extent that the Buyer Companies would have been able to exercise had the Transactions not occurred, without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Buyer Companies would otherwise be required to pay in the absence of such Transactions.

3.14 Taxes and Returns. Except as set forth on Schedule 3.14:

(a) Each Buyer Company has timely filed, or caused to be timely filed, all material Tax Returns required to be filed by it (taking into account all available extensions). All such Tax Returns are true, accurate, correct and complete in all material respects. All Taxes required to be paid, collected or withheld, other than such Taxes for which adequate reserves in Buyer Financials have been established, have been timely paid, collected or withheld. Each Buyer Company has complied in all material respects with all applicable Laws relating to Tax.

(b) There is no current pending or, to the Knowledge of Buyer, threatened Action against a Buyer Company by a Governmental Authority in a jurisdiction where a Buyer Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(c) No Buyer Company is being audited by any Tax authority or has been notified in writing or, to the Knowledge of Buyer, orally by any Tax authority that any such audit is contemplated or pending. To Buyer's Knowledge, there are no claims, assessments, audits, examinations, investigations or other Actions pending against a Buyer Company in respect of any Tax, and no Buyer Company has been notified in writing of any proposed Tax claims or assessments against it (other than, in each case, claims or assessments for which adequate reserves in Buyer Financials have been established).

(d) There are no Liens with respect to any Taxes upon any Buyer Company's assets, other than Permitted Liens.

(e) No Buyer Company has any outstanding waivers or extensions of any applicable statute of limitations to assess any material amount of Taxes. There are no outstanding requests by a Buyer Company for any extension of time within which to file any Tax Return or within which to pay any Taxes shown to be due on any Tax Return (other than an extension resulting from having received an automatic extension of time to file the applicable Tax Return not requiring the approval of any Governmental Authority).

(f) No Buyer Company has made any change in accounting method (except as required by a change in Law) or received a ruling from, or signed an agreement with, any taxing authority that would reasonably be expected to have a material impact on its Taxes following the Closing.

(g) No Buyer Company has engaged in any (i) "reportable transaction" as defined in Treasury Regulations Section 1.6011-4(b), (ii) "listed transaction," or (iii) transaction, a "significant" purpose of which is the avoidance or evasion of U.S. federal income Tax, within the meanings of Sections 6662, 6662A, 6011, 6012, 6111 or 6707A of the Code or the Treasury Regulations promulgated thereunder.

(h) Each Buyer Company has complied with, and is currently in compliance with, all transfer pricing rules and regulations (including, to the extent applicable, Section 482 of the Code and any comparable or similar provision of applicable Law). To the extent legally required, the Buyer Companies have properly and timely documented their transfer pricing methodology in compliance with Sections 482 and 6662 of the Code and any comparable or similar provision of applicable Law. No Buyer Company is a party to any advance pricing agreement or any similar Contract or agreement. No Buyer Company is subject to any gain recognition agreement under Section 367 of the Code.

(i) No Buyer Company has been, in the past five (5) years, a party to a transaction reported or intended to qualify as a reorganization under Section 368 of the Code.

(j) No Buyer Company has any Liability for the Taxes of another Person (other than another Buyer Company) (i) under any applicable Tax Law, (ii) as a transferee or successor, or (iii) by Contract, indemnity or otherwise (excluding commercial agreements entered into in the ordinary course of business the primary purpose of which was not the sharing of Taxes). No Buyer Company is a party to or bound by any Tax indemnity agreement, Tax sharing agreement or Tax allocation agreement or similar agreement, arrangement or practice (excluding commercial agreements entered into in the ordinary course of business the primary purpose of which was not the sharing of Taxes) with respect to Taxes (including advance pricing agreement, closing agreement or other agreement relating to Taxes with any Governmental Authority) that will be binding on such Buyer Company with respect to any period following the Closing Date.

(k) No Buyer Company has requested, or is the subject of or bound by any private letter ruling, technical advice memorandum, closing agreement or similar ruling, memorandum or agreement with any Governmental Authority with respect to any Taxes, nor is any such request outstanding.

(l) No Buyer Company: (i) has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of securities (to any Person or entity that is not a member of the consolidated group of which Buyer is the common parent corporation) qualifying for, or intended to qualify for, Tax-free treatment under Section 355 of the Code (A) within the two-year period ending on the date hereof or (B) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Transactions; or (ii) is or has ever been (A) a U.S. real property holding corporation within the meaning of Section 897(c)(2) of the Code, or (B) a member of any consolidated, combined, unitary or affiliated group of corporations for any Tax purposes other than a group of which Buyer is or was the common parent corporation.

(m) To the Knowledge of Buyer, no shareholder of Buyer is subject to a binding commitment or has otherwise agreed to sell, exchange, transfer by gift or otherwise dispose of any of the shares of Buyer received by it pursuant to this Agreement, or take any other action that would be reasonably likely to prevent the Share Exchange from qualifying as a transaction described in Section 351 of the Code.

(n) No Buyer Company, nor any of the respective Affiliates of any such Persons, have taken or have agreed to take any action, or is aware of any fact or circumstance, that would be reasonably likely to prevent the Share Exchange from qualifying as an exchange described in Section 351 of the Code.

3.15 Real Property.

(a) Schedule 3.15(a) contains a complete and accurate list of all premises currently leased or subleased or otherwise used or occupied by a Buyer Company for the operation of the business of a Buyer Company, and of all current leases, lease guarantees, agreements and documents related thereto, including all amendments, terminations and modifications thereof or waivers thereto (collectively, the "***Buyer Real Property Leases***"), as well as the current annual rent and term under each Buyer Real Property Lease. Buyer has provided to the Company a true and complete copy of each of the Buyer Real Property Leases, and in the case of any oral Buyer Real Property Lease, a written summary of the material terms of such Buyer Real Property Lease. The Buyer Real Property Leases are valid, binding and enforceable in accordance with their terms and are in full force and effect. No event has occurred which (whether with or without notice, lapse of time or both or the happening or occurrence of any other event) would constitute a default on the part of a Buyer Company or, to the Knowledge of Buyer, any other party under any of Buyer Real Property Leases, and no Buyer Company has received notice of any such condition.

(b) Schedule 3.15(b) contains a complete and accurate list of all property owned by a Buyer Company ("***Buyer Owned Real Property***"), including the name of the record owner of each Buyer Owned Real Property. No Buyer Company is a lessor, sublessor or grantor under any lease, sublease, Consent, license or other instrument granting to another Person any right to the possession, use, occupancy or enjoyment of the Owned Real Property.

(c) All certificates of occupancy, Permits, licenses, franchises, approvals and authorizations (collectively, the "***Real Property Permits***") of all Governmental Authorities, boards of fire underwriters, associations or any other Person having jurisdiction over the Owned Real Property that are required or appropriate to use or occupy the Owned Real Property or to operate the Buyer's business as currently conducted thereon, have been issued and are in full force and effect. Buyer has not received any written notice from any Governmental Authorities of any uncured violations of any federal, state, county or municipal Law, ordinance, Order, regulation or requirement affecting the Buyer Companies, the Leased Real Property or the Owned Real Property or the ability of the Seller and the Buyer Companies to consummate the Transactions. Buyer Companies have not received any written notice that any insurance policy held by or on behalf of the Buyer Companies relating to or affecting the Buyer Owned Real Property or Buyer Real Property Leases is not in full force and effect and the Company has not received any written notice of default that remains uncured or notice terminating or threatening to terminate any such insurance policy.

3.16 Personal Property. Each item of Personal Property which is currently owned, used or leased by a Buyer Company with a book value or fair market value of greater than Fifty Thousand Dollars ($50,000) or that is otherwise material to its business is set forth on Schedule 3.16, along with to the extent applicable, a list of lease agreements, lease guarantees, security agreements and other agreements related thereto, including all amendments, terminations and modifications thereof or waivers thereto ("***Buyer Personal Property Leases***"). Except as set forth in Schedule 3.16, all such items of personal property are in good operating condition and repair (reasonable wear and tear excepted consistent with the age of such items), and are suitable for their intended use in the business of the Buyer Companies. The operation of each Buyer Company's business as it is now conducted is not dependent upon the right to use the Personal Property of Persons other than a Buyer Company, except for such Personal Property that is owned, leased or licensed by, or otherwise contracted to, a Buyer Company. Buyer has provided to the Company a true and complete copy of each of the Buyer Personal Property Leases, and in the case of any oral Buyer Personal Property Lease, a written summary of the material terms of such Buyer Personal Property Lease. The Buyer Personal Property Leases are valid, binding and enforceable in accordance with their terms and are in full force and effect. To the Knowledge of Buyer, no event has occurred which (whether with or without notice, lapse of time or both or the happening or occurrence of any other event) would constitute a default on the part of a Buyer Company or any other party under any of the Buyer Personal Property Leases, and no Buyer Company has received notice of any such condition.

3.17 Title to and Sufficiency of Assets. Each Buyer Company has good and marketable title to, or a valid leasehold interest in or right to use, all of its assets, free and clear of all Liens other than (a) Permitted Liens, (b) the rights of lessors under leasehold interests, (c) Liens specifically identified on the Buyer Interim Balance Sheet and (d) Liens set forth on Schedule 3.17. The assets (including Intellectual Property rights and contractual rights) of the Buyer Companies constitute all of the assets, rights and properties that are used in the operation of the businesses of the Buyer Companies as it is now conducted or that are used or held by the Buyer Companies for use in the operation of the businesses of the Buyer Companies, and, taken together, are adequate and sufficient for the operation of the businesses of the Buyer Companies as currently conducted.

3.18 Employee Matters.

(a) Except as set forth in Schedule 3.18(a), no Buyer Company is a party to any collective bargaining agreement or other Contract covering any group of employees, labor organization or other Representative of any of the employees of any Buyer Company and Buyer has no Knowledge of any activities or proceedings of any labor union or other party to organize or represent such employees. There has not occurred or, to the Knowledge of Buyer, been threatened any strike, slow-down, picketing, work-stoppage, or other similar labor activity with respect to any such Buyer Company employees. There are no unresolved labor Actions (including unresolved grievances and age or other discrimination claims) that are pending or, to the Knowledge of Buyer, threatened, between any Buyer Company and Persons employed by or providing services as independent contractors to a Buyer Company. No current officer or employee of a Buyer Company has provided any Buyer Company written or, to the Knowledge of Buyer, oral notice of his or her plan to terminate his or her employment with any Buyer Company.

(b) Except as set forth in Schedule 3.18(a), each Buyer Company (i) is and has been in compliance for the past three (3) years in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, health and safety and wages and hours, and other Laws relating to discrimination, disability, labor relations, hours of work, payment of wages and overtime wages, pay equity, immigration, workers compensation, working conditions, employee scheduling, occupational safety and health, family and medical leave, and employee terminations, and has not received written or, to the Knowledge of Buyer, oral notice that there is any pending Action involving unfair labor practices against a Buyer Company, (ii) is not liable for any material past due arrears of wages or any material penalty for failure to comply with any of the foregoing, and (iii) is not liable for any material payment to any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits or obligations for employees, independent contractors or consultants (other than routine payments to be made in the ordinary course of business and consistent with past practice). There are no Actions pending or, to the Knowledge of Buyer, threatened against a Buyer Company brought by or on behalf of any applicant for employment, any current or former employee, any Person alleging to be a current or former employee, or any Governmental Authority, relating to any such Law or regulation, or alleging breach of any express or implied Contract of employment, wrongful termination of employment, or alleging any other discriminatory, wrongful or tortious conduct in connection with the employment relationship. No Buyer Company has received any report of any act or allegation of or relating to sex-based discrimination, sexual harassment, sexual misconduct, workplace harassment, or breach of any policy of any Buyer Company relating to the foregoing, in each case involving any employee, former employee or independent contractor or consultant, nor has there been any settlement or similar out-of-court or pre-litigation arrangement relating to any such matters, nor has any such action, settlement or other arrangement been proposed or, to the Buyer's Knowledge, threatened.

(c) Except as set forth on Schedule 3.18(c), (A) no employee is a party to a written employment Contract with a Buyer Company and each is employed "at will," and (B) the Buyer Companies have paid in full to all their employees all wages, salaries, commission, bonuses and other compensation due to their employees, including overtime compensation, and no Buyer Company has any obligation or Liability (whether or not contingent) with respect to severance payments to any such employees under the terms of any written or, to Buyer's Knowledge, oral agreement, or commitment or any applicable Law, custom, trade or practice. Except as set forth in Schedule 3.18(c), each Buyer Company employee has entered into Buyer's standard form of employee non-disclosure, inventions and restrictive covenants agreement with a Buyer Company (whether pursuant to a separate agreement or incorporated as part of such employee's overall employment agreement), a copy of which has been made available to the Company by Buyer.

(d) Except as set forth on Schedule 3.18(d), each such independent contractor has entered into customary covenants regarding confidentiality, non-competition and assignment of inventions and Copyrights in such Person's agreement with a Buyer Company, a copy of which has been provided to the Company by Buyer. For the purposes of applicable Law, including the Code, all independent contractors who are currently, or within the last six (6) years have been, engaged by a Buyer Company are bona fide independent contractors and not employees of a Buyer Company. Except as set forth on Schedule 3.18(d), each independent contractor is terminable on fewer than thirty (30) days' notice, without any obligation of any Buyer Company to pay severance or a termination fee.

3.19 Benefit Plans.

(a) Set forth on Schedule 3.19(a) is a true and complete list of each Benefit Plan that is maintained, contributed to, required to be contributed to, or sponsored by Buyer or any Buyer Company for the benefit of any current or former employee, officer, director or consultant, or under which Buyer or any Buyer Company has any liability (each, a "***Buyer Benefit Plan***").

(b) With respect to each Buyer Benefit Plan, Buyer has made available to the Company accurate and complete copies, if applicable, of: (i) the current plan documents and currently effective related trust agreements or annuity Contracts (including any amendments, modifications or supplements thereto), and written descriptions of the material terms of any Buyer Benefit Plans which are not in writing; (ii) the most recent actuarial valuation; (iii) the most recent summary plan description and summaries of material modifications thereto; (iv) a copy of the three (3) most recently filed Form 5500 annual reports and accompanying schedules, (v) copy of the most recently received IRS determination, opinion or advisory letter; (vi) the three (3) most recent nondiscrimination testing reports, safe-harbor notice, and automatic enrollment notices, as applicable, and (vii) all material non-routine communications with any Governmental Authority within the past three (3) years concerning any matter that is still pending or for which a Buyer Company has any outstanding Liability or obligation.

(c) With respect to each Buyer Benefit Plan: (i) such Buyer Benefit Plan has been administered and enforced in all material respects in accordance with its terms and the requirements of all applicable Laws, and has been maintained, where required, in good standing with applicable regulatory authorities and Governmental Authorities; (ii) to the Knowledge of Buyer no breach of fiduciary duty has occurred; (iii) no Action is pending, or to Buyer's Knowledge, threatened (other than routine claims for benefits arising in the ordinary course of administration); and (iv) all contributions, premiums and other payments (including any special contribution, interest or penalty) required to be made with respect to a Buyer Benefit have in all material respects been timely made.

(d) No Buyer Company has any commitment to modify, change or terminate any Buyer Benefit Plan, other than with respect to a modification, change or termination required by ERISA or the Code, or other applicable Law.

(e) No Buyer Company is a party to any agreement, contract, arrangement or Buyer Benefit Plan that has resulted or could result, separately or in the aggregate, in the payment of (i) any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding or similar provision of state, local or non-U.S. law) or (ii) any amount that will not be fully deductible as a result of Section 162(m) of the Code (or any corresponding or similar provision of state, local or non-U.S. law).

(f) None of the Buyer Benefit Plans is or has at any time been, nor does any Buyer Company or any ERISA Affiliate (as defined below) have or reasonably expect to have any liability or obligation under (i) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), (ii) a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) subject to Section 412 of the Code or Title IV of ERISA, (iii) a multiple employer plan subject to Section 413(c) of the Code, (iv) a multiple employer welfare arrangement under ERISA, or (v) a voluntary employees' beneficiary association as defined in Section 501(c)(9) of the Code. For purposes of this Agreement, "***ERISA Affiliate***" means any entity that together with any Buyer Company is a "single employer" for purposes of Section 4001(b)(1) of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

3.20 Environmental Matters. Except as set forth in Schedule 3.20:

(a) Each Buyer Company is and has been in compliance in all material respects with all applicable Environmental Laws, including obtaining, maintaining in good standing, and complying in all material respects with all Permits required for its business and operations by Environmental Laws ("***Environmental Permits***"), no Action is pending or, to Buyer's Knowledge, threatened to revoke, modify, or terminate any such Environmental Permit, and, to Buyer's Knowledge, no facts, circumstances, or conditions currently exist that could adversely affect such continued compliance with Environmental Laws and Environmental Permits or require capital expenditures to achieve or maintain such continued compliance with Environmental Laws and Environmental Permits.

(b) No Buyer Company is the subject of any outstanding Order or Contract with any Governmental Authority or other Person in respect of any (i) Environmental Laws, (ii) Remedial Action, or (iii) Release or threatened Release of a Hazardous Material. No Buyer Company has assumed, contractually or by operation of Law, any Liabilities or obligations under any Environmental Laws.

(c) No Action has been made or is pending, or to Buyer's Knowledge, threatened, against any Buyer Company or any assets of a Buyer Company alleging either or both that a Buyer Company may be in material violation of any Environmental Law or Environmental Permit or may have any material Liability under any Environmental Law.

(d) No Buyer Company has manufactured, treated, stored, disposed of, arranged for or permitted the disposal of, generated, handled or Released any Hazardous Material, or owned or operated any property or facility, in a manner that has given or would reasonably be expected to give rise to any material Liability or obligation under applicable Environmental Laws. No fact, circumstance, or condition exists in respect of any Buyer Company or any property currently or formerly owned, operated, or leased by any Buyer Company or any property to which a Buyer Company arranged for the disposal or treatment of Hazardous Materials that could reasonably be expected to result in a Buyer Company incurring any material Environmental Liabilities.

(e) There is no investigation of the business, operations, or currently owned, operated, or leased property of a Buyer Company or, to Buyer's Knowledge, previously owned, operated, or leased property of a Buyer Company pending or, to Buyer's Knowledge, threatened that could lead to the imposition of any Liens under any Environmental Law or material Environmental Liabilities.

(f) To the Knowledge of Buyer, there is not located at any of the properties of a Buyer Company any (i) underground storage tanks, (ii) asbestos-containing material, or (iii) equipment containing polychlorinated biphenyls.

(g) Buyer has provided to the Company all environmentally related site assessments, audits, studies, reports, analysis and results of investigations that have been performed in respect of the currently or previously owned, leased, or operated properties of any Buyer Company.

3.21 Transactions with Related Persons. Except as set forth on Schedule 3.21, no Buyer Company nor any of its Affiliates, nor any officer, director, manager, employee, trustee or beneficiary of a Buyer Company or any of its Affiliates, nor any immediate family member of any of the foregoing (whether directly or indirectly through an Affiliate of such Person) (each of the foregoing, a "***Related Person***") is presently, or in the past three (3) years, has been, a party to any transaction with a Buyer Company, including any Contract or other arrangement (a) providing for the furnishing of services by (other than as officers, directors or employees of Buyer Company), (b) providing for the rental of real property or Personal Property from or (c) otherwise requiring payments to (other than for services or expenses as directors, officers or employees of the Buyer Company in the ordinary course of business consistent with past practice) any Related Person or any Person in which any Related Person has an interest as an owner, officer, manager, director, trustee or partner or in which any Related Person has any direct or indirect interest (other than the ownership of securities representing no more than two percent (2%) of the outstanding voting power or economic interest of a publicly traded company). Except as set forth on Schedule 3.21, no Buyer Company has outstanding any Contract or other arrangement or commitment with any Related Person, and no Related Person owns any real property or Personal Property, or right, tangible or intangible (including Intellectual Property) which is used in the business of any Buyer Company. Except as set forth on Schedule 3.21, assets of the Buyer Companies do not include any receivable or other obligation from a Related Person, and the Liabilities of the Buyer Companies do not include any payable or other obligation or commitment to any Related Person. Schedule 3.21 specifically identifies all Contracts, arrangements or commitments set forth on such Schedule 3.21 that cannot be terminated upon sixty (60) days' notice by the Buyer Companies without cost or penalty.

3.22 Investment Company Act. Buyer is not an "investment company" or a Person directly or indirectly "controlled" by or acting on behalf of an "investment company", in each case within the meaning of the Investment Company Act.

3.23 Finders and Brokers. Except as set forth on Schedule 3.23, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Buyer, the Buyer Companies or any of their respective Affiliates in connection with the Transactions based upon arrangements made by or on behalf of Buyer.

3.24 Certain Business Practices.

(a) No Buyer Company, nor any of their Representatives acting on their behalf, has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees, to foreign or domestic political parties or campaigns or violated any provision of the U.S. Foreign Corrupt Practices Act of 1977 or any other local or foreign anti-corruption or bribery Law, (iii) made any other unlawful payment or (iv) since January 1, 2021, directly or indirectly, given or agreed to give any unlawful gift or similar benefit in any material amount to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder any Buyer Company or assist and Buyer Company in connection with any actual or proposed transaction.

(b) The operations of each Buyer Company are and have been conducted at all times in compliance with money laundering statutes in all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority, and no Action involving a Buyer Company with respect to any of the foregoing is pending or, to the Knowledge of Buyer, threatened.

(c) No Buyer Company or any of their respective directors or officers, or, to the Knowledge of Buyer, any other Representative acting on behalf of a Buyer Company, is currently identified on the specially designated nationals or other blocked person list or otherwise currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("***OFAC***"), and no Buyer Company has, directly or indirectly, used any funds, or loaned, contributed or otherwise made available such funds to any Subsidiary, joint venture partner or other Person, in connection with any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to, or otherwise in violation of, any U.S. sanctions administered by OFAC in the last five (5) fiscal years.

3.25 Business Insurance.

(a) Schedule 3.25(a) lists all insurance policies (by policy number, insurer, coverage period, coverage amount, annual premium and type of policy) held by a Buyer Company relating to a Buyer Company or its business, properties, assets, directors, officers and employees, copies of which have been provided to the Company. All premiums due and payable under all such insurance policies have been timely paid and the Buyer Companies are otherwise in material compliance with the terms of such insurance policies. Each such insurance policy (i) is legal, valid, binding, enforceable and in full force and effect and (ii) will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the Closing. No Buyer Company has any self-insurance or co-insurance programs. Since January 1, 2021, no Buyer Company has received any notice from, or on behalf of, any insurance carrier relating to or involving any adverse change or any change other than in the ordinary course of business, in the conditions of insurance, any refusal to issue an insurance policy or non-renewal of a policy.

(b) Schedule 3.25(b) identifies each individual insurance claim in excess of $50,000 made by a Buyer Company since January 1, 2021. Each Buyer Company has reported to its insurers all claims and pending circumstances that would reasonably be expected to result in a claim, except where such failure to report such a claim would not be reasonably likely to be material to the Buyer Companies. To the Knowledge of Buyer, no event has occurred, and no condition or circumstance exists, that would reasonably be expected to (with or without notice or lapse of time) give rise to or serve as a basis for the denial of any such insurance claim. No Buyer Company has made any claim against an insurance policy as to which the insurer is denying coverage.

3.26 Top Suppliers. Schedule 3.26 lists, by dollar volume received or paid, as applicable, for each of (a) the twelve (12) months ended on December 31, 2022 and (b) the period from January 1, 2023 through September 30, 2023, the ten (10) largest suppliers of goods or services to the Buyer Companies (the "***Buyer Top Vendors***"), along with the amounts of such dollar volumes. The relationships of each Buyer Company with such suppliers are good commercial working relationships and (i) no Buyer Top Vendor within the last twelve (12) months has cancelled or otherwise terminated, or, to Buyer's Knowledge, intends to cancel or otherwise terminate, any material relationships of such Person with a Buyer Company, (ii) no Buyer Top Vendor has during the last twelve (12) months decreased materially or, to Buyer's Knowledge, threatened to stop, decrease or limit materially, or intends to modify materially its material relationships with a Buyer Company or intends to stop, decrease or limit materially its products or services to any Buyer Company or its usage or purchase of the products or services of any Buyer Company, (iii) to Buyer's Knowledge, no Buyer Top Vendor intends to refuse to pay any amount due to any Buyer Company or seek to exercise any remedy against any Buyer Company, (iv) except as set forth on Schedule 3.26, no Buyer Company has within the past two (2) years been engaged in any material dispute with any Buyer Top Vendor, and (v) to Buyer's Knowledge, the consummation of the Transactions and the Ancillary Documents will not adversely affect the relationship of any Buyer Company with any Buyer Top Vendor.

3.27 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, condition (financial or otherwise) or assets of the Target Companies and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Target Companies for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the Transactions, it has relied solely upon its own investigation and the express representations and warranties of the Company and the Sellers set forth in this Agreement (including the related portions of the Company Disclosure Schedules (as defined below)) and in any certificate delivered to Buyer pursuant hereto, and the information provided by or on behalf of the Company or the Sellers for the Registration Statement; and (b) none of the Company or the Sellers or their respective Representatives have made any representation or warranty as to the Target Companies or the Sellers, except as expressly set forth in this Agreement (including the related portions of the Company Disclosure Schedules) or in any certificate delivered to Buyer pursuant hereto.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure schedules delivered by the Company to Buyer on the date hereof (the "***Company Disclosure Schedules***"), the Section numbers of which are numbered to correspond to the Section numbers of this Agreement to which they refer, the Company hereby represents and warrants to Buyer as follows:

4.1 Organization and Standing. The Company is a company duly incorporated, validly existing and in good standing under the laws of Switzerland and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Each other Target Company is a corporation or other entity duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Each Target Company is duly qualified or licensed and in good standing in the jurisdiction in which it is incorporated or registered and in each other jurisdiction where it does business or operates to the extent that the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary. Schedule 4.1 lists all jurisdictions in which any Target Company is qualified to conduct business and all names other than its legal name under which any Target Company does business. The Company has provided to Buyer accurate and complete copies of the Organizational Documents of each Target Company, each as amended to date and as currently in effect. No Target Company is in violation of any provision of its Organizational Documents.

4.2 Authorization; Binding Agreement. The Company has all requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Document to which it is a party, to perform the Company's obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each Ancillary Document to which the Company is a party and the consummation of the transactions contemplated hereby and thereby, (a) have been duly and validly authorized by the board of directors and shareholders of the Company in accordance with the Company's Organizational Documents, the laws of its jurisdiction of incorporation or formation, any other applicable Law and any Contract to which the Company or any of its shareholders are party or bound and (b) no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement and each Ancillary Document to which it is a party or to consummate the transactions contemplated hereby and thereby. This Agreement has been, and each Ancillary Document to which the Company is a party shall be when delivered, duly and validly executed and delivered by the Company Party and assuming the due authorization, execution and delivery of this Agreement and any such Ancillary Document by the other parties hereto and thereto, constitutes, or when delivered shall constitute, the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

4.3 Capitalization.

(a) The issued shares in the capital of the Company consists of 412,572 Company Shares, and there are no other issued equity interests of the Company, or rights to acquire equity interests of the Company, except for the Company Convertible Securities. Prior to giving effect to the Transactions, Sellers are the legal (registered) and beneficial owners of all of the issued and outstanding equity interests of the Company, with each Seller owning the Company Shares or Convertible Securities set forth on Schedule 4.3(a), all of which are owned by the Sellers free and clear of any Liens other than those imposed under the Company Organizational Documents and applicable securities Laws. After giving effect to the Share Exchange, Buyer shall own all of the issued and outstanding Company Shares free and clear of any Liens other than those imposed under the Company Organizational Documents and applicable securities Laws. All of the issued Company Shares have been duly authorized, are fully paid and non-assessable (meaning no further payments are due by the respective holder) and not in violation of any purchase option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the laws of its jurisdiction of incorporation or formation, any other applicable Law, the Company's Organizational Documents or any Contract to which the Company is a party or by which the Company or its securities are bound. The Company does not, directly or indirectly, hold any of its shares or other equity interests in treasury.

(b) Schedule 4.3(b) sets forth the beneficial and record owners of all outstanding Company Convertible Securities (if any) prior to the Share Exchange, and except as set forth on Schedule 4.3(b), there are no Company Convertible Securities or preemptive rights or rights of first refusal or first offer, nor are there any Contracts, commitments, arrangements or restrictions to which the Company or, to the Knowledge of the Company, any of its shareholders are a party or bound relating to any equity securities of the Company, whether or not outstanding. There are no outstanding or authorized equity appreciation, phantom equity or similar rights with respect to the Company. Except as set forth on Schedule 4.3(b), there are no voting trusts, proxies, shareholder agreements or any other agreements or understandings with respect to the voting of the Company's share capital. Except as set forth in the Company's Organizational Documents, there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any of its shares or securities, nor has the Company granted any registration rights to any Person with respect to its shares. All of the issued and outstanding securities of the Company have been granted, offered, sold and issued in compliance with all applicable securities Laws. Except as set forth on Schedule 4.3(b), no shares in the capital of the Company are issuable and no rights in connection with any interests, warrants, rights, options or other securities of the Company accelerate or otherwise become triggered (whether as to vesting, exercisability, convertibility or otherwise) as a result of the consummation of the Transactions.

(c) All Indebtedness of the Company as of the date of this Agreement is disclosed in the audited financial statements of the Target Companies as of December 31, 2022, or on Schedule 4.3(c). No Indebtedness of the Company contains any restriction upon: (i) the prepayment of any such Indebtedness, (ii) the incurrence of Indebtedness by the Company, (iii) the ability of the Company to grant any Lien on its properties or assets, or (iv) the consummation of the Transactions.

(d) Since January 1, 2023, the Company has not declared or paid any distribution or dividend in respect of its shares and has not repurchased, redeemed or otherwise acquired any shares in the capital of the Company, and the board of directors of the Company has not authorized any of the foregoing.

4.4 Subsidiaries. Schedule 4.4 sets forth the name of each Subsidiary of the Company, and with respect to each Subsidiary (a) its jurisdiction of organization, (b) its authorized shares or other equity interests (if applicable), and (c) the number of issued and outstanding shares or other equity interests and the record holders and beneficial owners thereof. All of the outstanding equity securities of each Subsidiary of the Company are duly authorized and validly issued, fully paid and non-assessable (if applicable), and were offered, sold and delivered in compliance with all applicable securities Laws, and owned by one or more of the Target Companies free and clear of all Liens (other than those, if any, imposed by such Subsidiary's Organizational Documents). There are no Contracts to which the Company or any of its Affiliates is a party or bound with respect to the voting (including voting trusts or proxies) of the equity interests of any Subsidiary of the Company other than the Organizational Documents of any such Subsidiary. There are no outstanding or authorized options, warrants, rights, agreements, subscriptions, convertible securities or commitments to which any Subsidiary of the Company is a party or which are binding upon any Subsidiary of the Company providing for the issuance or redemption of any equity interests of any Subsidiary of the Company. There are no outstanding equity appreciation, phantom equity, profit participation or similar rights granted by any Subsidiary of the Company. Except as set forth in Schedule 4.4, no Subsidiary of the Company has any limitation, whether by Contract, Order or applicable Law, on its ability to make any distributions or dividends to its equity holders or repay any debt owed to another Target Company. Except for the equity interests of the Subsidiaries listed on Schedule 4.4, the Company does not own or have any rights to acquire, directly or indirectly, any equity interests of, or otherwise Control, any Person. No Target Company is a participant in any joint venture, partnership or similar arrangement. There are no outstanding contractual obligations of the Target Company to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person.

4.5 Governmental Approvals. No Consent of or with any Governmental Authority on the part of any Target Company is required to be obtained or made in connection with the execution, delivery or performance by the Company of this Agreement or any Ancillary Documents or the consummation by the Company of the transactions contemplated hereby or thereby other than (a) such filings as are expressly contemplated by this Agreement, (b) pursuant to Antitrust Laws and (c) where the failure to obtain or make such Consents or to make such filings or notifications would not reasonably be expected to have a Material Adverse Effect on the Company.

4.6 Non-Contravention. Except as otherwise described in Schedule 4.6, the execution and delivery by the Company (or any other Target Company, as applicable) of this Agreement and each Ancillary Document to which any Target Company is a party, the consummation by any Target Company of the transactions contemplated hereby and thereby, and compliance by any Target Company with any of the provisions hereof and thereof, shall not (a) conflict with or violate any provision of any Target Company's Organizational Documents, (b) subject to obtaining the Consents from Governmental Authorities referred to in Section 4.6 hereof, and the waiting periods referred to therein having expired, and any condition precedent to such Consent or waiver having been satisfied, conflict with or violate any Law, Order or Consent applicable to any Target Company or any of its properties or assets, or (c) (i) violate, conflict with or result in a breach of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination, withdrawal, suspension, cancellation or modification of, (iv) accelerate the performance required by any Target Company under, (v) result in a right of termination or acceleration under, (vi) give rise to any obligation to make payments or provide compensation under, (vii) result in the creation of any Lien upon any of the properties or assets of any Target Company under, (viii) give rise to any obligation to obtain any third party Consent or provide any notice to any Person under or (ix) give any Person the right to declare a default, exercise any remedy, claim a rebate, chargeback, penalty or change in delivery schedule, accelerate the maturity or performance, cancel, terminate or modify any right, benefit, obligation or other term under, any of the terms, conditions or provisions of any Company Material Contract, except for any deviations from the foregoing clause (c) that would not reasonably be expected to have a Material Adverse Effect on the Company.

4.7 Financial Statements.

(a) As used herein, the term "***Company Financials***" means (i) the audited consolidated financial statements of the Target Companies (including, in each case, any related notes thereto), consisting of the consolidated balance sheet of the Target Companies as of December 31, 2022 (the "***Company Balance Sheet***"; such date, the "***Company Balance Sheet Date***"), and as of December 31, 2021 and December 31, 2020, and the related consolidated audited income statements, changes in shareholder equity and statements of cash flows for the years then ended (the "***Audited Company Financials***"). The Audited Company Financials (x) were prepared from the books and records of the Target Companies as of the times and for the periods referred to therein, (y) were prepared in accordance with Swiss GAAP, consistently applied throughout and among the periods involved (except that the unaudited statements exclude the footnote disclosures and other presentation items required for Swiss GAAP and exclude year-end adjustments which will not be material in amount), and (z) are complete and correct and fairly present in all material respects the consolidated financial position of the Target Companies as of the respective dates thereof and the consolidated results of the operations and cash flows of the Target Companies for the periods indicated. No Target Company has ever been subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act.

(b) Each Target Company maintains accurate books and records reflecting its assets and Liabilities and maintains proper and adequate internal accounting controls that provide reasonable assurance that (i) such Target Company does not maintain any off-the-book accounts and that such Target Company's assets are used only in accordance with such Target Company's management directives, (ii) transactions are executed with management's authorization, (iii) transactions are recorded as necessary to permit preparation of the financial statements of such Target Company and to maintain accountability for such Target Company's assets, (iv) access to such Target Company's assets is permitted only in accordance with management's authorization, (v) the reporting of such Target Company's assets is compared with existing assets at regular intervals and verified for actual amounts, and (vi) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection of accounts, notes and other receivables on a current and timely basis. All of the financial books and records of the Target Companies are complete and accurate in all material respects and have been maintained in the ordinary course consistent with past practice and in accordance with applicable Laws. No Target Company has been subject to or involved in any material fraud that involves management or other employees who have a significant role in the internal controls over financial reporting of any Target Company. Since January 1, 2021, no Target Company nor its Representatives has received any written complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of any Target Company or its internal accounting controls, including any material written complaint, allegation, assertion or claim that any Target Company has engaged in questionable accounting or auditing practices.

(c) The Target Companies do not have any Indebtedness other than the Indebtedness set forth on Schedule 4.7(c), and in such amounts (including principal and any accrued but unpaid interest or other obligations with respect to such Indebtedness), as set forth on Schedule 4.7(c). Except as disclosed on Schedule 4.7(c), no Indebtedness of any Target Company contains any restriction upon (i) the prepayment of any of such Indebtedness, (ii) the incurrence of Indebtedness by any Target Company, or (iii) the ability of the Target Companies to grant any Lien on their respective properties or assets.

(d) No Target Company is subject to any Liabilities or obligations (whether or not required to be reflected on a balance sheet prepared in accordance with Swiss GAAP), including any off-balance sheet obligations or any "variable interest entities" (within the meaning Accounting Standards Codification 810), except for those that are either (i) adequately reflected or reserved on or provided for in the consolidated balance sheet of the Company and its Subsidiaries as of the Company Balance Sheet Date contained in the Company Financials or (ii) not material and that were incurred after the Company Balance Sheet Date in the ordinary course of business consistent with past practice (other than Liabilities for breach of any Contract or violation of any Law).

(e) All financial projections with respect to the Target Companies that were delivered by or on behalf of the Company to Buyer or its Representatives were prepared in good faith using assumptions that the Company believes to be reasonable.

4.8 Absence of Certain Changes. Since January 1, 2023, except as set forth on Schedule 4.8 or for actions expressly contemplated by this Agreement, each Target Company has (a) conducted its business only in the ordinary course of business consistent with past practice and (b) not been subject to a Material Adverse Effect.

4.9 Compliance with Laws. No Target Company is or has been in material conflict or material non-compliance with, or in material default or violation of, nor has any Target Company received, since January 1, 2021, any written or, to the Knowledge of the Company, oral notice of any material conflict or non-compliance with, or material default or violation of, any applicable Laws by which it or any of its properties, assets, employees, business or operations are or were bound or affected.

4.10 Permits. Each Target Company (and its employees who are legally required to be licensed by a Governmental Authority in order to perform his or her duties with respect to his or her employment with any Target Company), holds all Permits necessary to lawfully conduct its business as presently conducted and as currently contemplated to be conducted, and to own, lease and operate its assets and properties (collectively, the "***Company Permits***") except where the failure to have any of such Company Permits has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has made available to Buyer true, correct and complete copies of all Company Permits material to the Company's business, all of which material Company Permits are listed on Schedule 4.10. All of the Company Permits are in full force and effect, and no suspension or cancellation of any of the Company Permits is pending or, to the Company's Knowledge, threatened. No Target Company is in violation in any material respect of the terms of any Company Permit, and no Target Company has received any written or, to the Knowledge of the Company, oral notice of any Actions relating to the revocation or modification of any Company Permit.

4.11 Litigation. Except as described on Schedule 4.11, there is no (a) Action of any nature currently pending or, to the Company's Knowledge, threatened, nor is there any reasonable basis for any Action to be made (and no such Action has been brought or, to the Company's Knowledge, threatened since January 1, 2021); or (b) Order now pending or outstanding or that was rendered by a Governmental Authority since January 1, 2021, in either case of (a) or (b) by or against any Target Company, its current or former directors or officers (provided, that any litigation involving the directors or officers of a Target Company must be related to the Target Company's business, equity securities or assets), its business, equity securities or assets. The items listed on Schedule 4.11, if finally determined adverse to the Target Companies, will not have, either individually or in the aggregate, a Material Adverse Effect upon the Target Companies, taken as a whole. Since January 1, 2021, none of the current or former officers, senior management or directors of any Target Company have been charged with, indicted for, arrested for, or convicted of any felony or any crime involving fraud.

4.12 Material Contracts.

(a) Schedule 4.12(a) sets forth a true, correct and complete list of, and the Company has made available to Buyer (including written summaries of oral Contracts), true, correct and complete copies of, each Contract to which any Target Company is a party or by which any Target Company, or any of its properties or assets are bound or affected (each Contract required to be set forth on Schedule 4.12(a), a "***Company Material Contract***") that:

(i) contains covenants that limit the ability of any Target Company (A) to compete in any line of business or with any Person or in any geographic area or to sell, or provide any service or product or solicit any Person, including any non-competition covenants, employee and customer non-solicit covenants, exclusivity restrictions, rights of first refusal or most-favored pricing clauses or (B) to purchase or acquire an interest in any other Person;

(ii) involves any joint venture, profit-sharing, partnership, limited liability company or other similar agreement or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture;

(iii) involves any exchange-traded, over-the-counter or other swap, cap, floor, collar, futures contract, forward contract, option or other derivative financial instrument or Contract, based on any commodity, security, instrument, asset, rate or index of any kind or nature whatsoever, whether tangible or intangible, including currencies, interest rates, foreign currency and indices;

(iv) evidences Indebtedness (whether incurred, assumed, guaranteed or secured by any asset) of any Target Company having an outstanding principal amount in excess of $100,000;

(v) involves the acquisition or disposition, directly or indirectly (by merger or otherwise), of assets with an aggregate value in excess of $100,000 (other than in the ordinary course of business consistent with past practice) or shares or other equity interests of any Target Company or another Person;

(vi) relates to any merger, consolidation or other business combination with any other Person or the acquisition or disposition of any other entity or its business or material assets or the sale of any Target Company, its business or material assets;

(vii) by its terms, individually or with all related Contracts, calls for aggregate payments or receipts by the Target Companies under such Contract or Contracts of at least $100,000 per year or $500,000 in the aggregate (other than each employment, management, service or consulting agreement);

(viii) is with any Company Top Customer or Company Top Vendor;

(ix) obligates the Target Companies to provide continuing indemnification or a guarantee of obligations of a third party after the date hereof in excess of $100,000;

(x) is between any Target Company and any directors, officers or employees of a Target Company (other than at-will employment arrangements and restrictive covenant agreements with employees entered into in the ordinary course of business consistent with past practice, and loans made to employees in the ordinary course of business in an amount not exceeding $25,000), including all non-competition, severance and indemnification agreements, or any Related Person;

(xi) obligates the Target Companies to make any capital commitment or expenditure in excess of $100,000 (including pursuant to any joint venture);

(xii) relates to a material settlement entered into within three (3) years prior to the date of this Agreement or under which any Target Company has outstanding obligations (other than customary confidentiality obligations); or

(xiii) provides another Person (other than another Target Company or any manager, director or officer of any Target Company) with a power of attorney.

(b) With respect to each Company Material Contract: (i) such Company Material Contract is valid and binding and enforceable in all respects against the Target Company party thereto and, to the Knowledge of the Company, each other party thereto, and is in full force and effect (except, in each case, as such enforcement may be limited by the Enforceability Exceptions); (ii) the consummation of the Transactions will not affect the validity or enforceability of any Company Material Contract; (iii) no Target Company is in breach or default in any material respect, and no event has occurred that with the passage of time or giving of notice or both would constitute a material breach or default by any Target Company, or permit termination or acceleration by the other party thereto, under such Company Material Contract; (iv) no Target Company is in breach or default in any material respect, and no event has occurred that to the Knowledge of the Company, no other party to such Company Material Contract is in breach or default in any material respect, and no event has occurred that with the passage of time or giving of notice or both would constitute such a material breach or default by such other party, or permit termination or acceleration by any Target Company, under such Company Material Contract; (v) no Target Company has received written or, to the Knowledge of the Company, oral notice of an intention by any party to any such Company Material Contract to terminate such Company Material Contract or amend the terms thereof, other than modifications in the ordinary course of business that do not adversely affect any Target Company in any material respect; and (vi) no Target Company has waived any rights under any such Company Material Contract.

4.13 Intellectual Property.

(a) Schedule 4.13(a)(i) sets forth: (i) all Patents and Patent applications, Trademarks and service mark registrations and applications, Copyright registrations and applications and registered Internet Assets owned or licensed by a Target Company or otherwise used or held for use by a Target Company in which a Target Company is the owner, applicant or assignee ("***Company Registered IP***"), specifying as to each item, as applicable: (A) the nature of the item, including the title, (B) the owner of the item, (C) the jurisdictions in which the item is issued or registered or in which an application for issuance or registration has been filed and (D) the issuance, registration or application numbers and dates; and (ii) all material unregistered trademarks and software owned or purported to be owned by a Target Company; Schedule 4.13(a)(ii) sets forth all Intellectual Property licenses, sublicenses and other agreements or permissions ("***Company IP Licenses***") (other than Off-the-Shelf Software), which are not required to be listed, although such licenses are "Company IP Licenses" as that term is used herein), under which a Target Company is a licensee or otherwise is authorized to use or practice any Intellectual Property. Each Target Company owns, free and clear of all Liens (other than Permitted Liens), has valid and enforceable rights in, and has the unrestricted right to use, sell, license, transfer or assign, all material Intellectual Property currently used or held for use by such Target Company, and previously used by such Target Company, except for the Intellectual Property that is the subject of the Company IP Licenses. Except as set forth on Schedule 4.13(a)(iii), all Company Registered IP is owned exclusively by the applicable Target Company without obligation to pay royalties, licensing fees or other fees, or otherwise account to any third party with respect to such Company Registered IP.

(b) All registration and maintenance fees relating to the Intellectual Property have been paid when due. Each Target Company has a valid and enforceable license to use all Intellectual Property that is the subject of the Company IP Licenses applicable to such Target Company. Each Target Company has performed all material obligations imposed on it in the Company IP Licenses, has made all payments required to date, and such Target Company is not, nor, to the Knowledge of the Company, is any other party thereto, in material breach or material default thereunder, nor, to the Knowledge of the Company, has any event occurred that with notice or lapse of time or both would constitute a default thereunder. The continued use by the Target Companies of the Intellectual Property that is the subject of the Company IP Licenses in the same manner that it is currently being used is not restricted by any applicable license of any Target Company. All registrations for Copyrights, Patents, Trademarks and Internet Assets that are owned by or exclusively licensed to any Target Company are valid and in force, and all applications to register any Copyrights, Patents and Trademarks are pending and in good standing, all without challenge of any kind.

(c) No Action is pending or, to the Company's Knowledge, threatened against a Target Company that challenges the validity, enforceability, ownership, or right to use, sell, license or sublicense any Intellectual Property currently owned, licensed, used or held for use by the Target Companies. No Target Company has received any written notice or claim asserting or suggesting that any infringement, misappropriation, violation, dilution or unauthorized use of the Intellectual Property of any other Person is or may be occurring or has or may have occurred (including any demands or offers to license any Intellectual Property rights from a third party), as a consequence of the business activities of any Target Company, nor to the Knowledge of the Company is there a reasonable basis therefor. There are no Orders to which any Target Company is a party or its otherwise bound that (i) restrict the rights of a Target Company to use, transfer, license or enforce any Intellectual Property owned by a Target Company, (ii) restrict the conduct of the business of a Target Company in order to accommodate a third Person's Intellectual Property, or (iii) grant any third Person any right with respect to any Intellectual Property owned by a Target Company. No Target Company is currently infringing, or has, in the past, infringed, misappropriated or violated any Intellectual Property of any other Person in any material respect in connection with the ownership, use or license of any Intellectual Property owned or purported to be owned by a Target Company or, to the Knowledge of the Company, otherwise in connection with the conduct of the respective businesses of the Target Companies. To the Company's Knowledge, no third party is infringing upon, has misappropriated or is otherwise violating any Intellectual Property owned, licensed by, licensed to, or otherwise used or held for use by any Target Company ("***Company IP***") in any material respect. No Target Company has received any opinion of counsel that any product or service provided or distributed in the operation of the businesses thereof, or the conduct of such business, currently or in the past, infringes any Intellectual Property right of another Person or any opinion of counsel otherwise regarding the right to practice any product or service in connection with such businesses.

(d) All employees and independent contractors of a Target Company have assigned to the Target Companies all Intellectual Property (including but not limited to inventions, and in each case including the unrestricted right of use) developed by such employees and independent contractors in the performance of services for a Target Company by such Persons (without further payment or royalty) other than to the extent ownership of such Intellectual Property would otherwise vest in the applicable the Target Company by operation of law. No current or former officers, employees or independent contractors of a Target Company have claimed any ownership interest in any Intellectual Property owned by a Target Company. To the Knowledge of the Company, there has been no violation of a Target Company's policies or practices related to protection of the Company IP or any confidentiality or nondisclosure Contract relating to the Intellectual Property owned by a Target Company. To the Company's Knowledge, none of the employees of any Target Company is obligated under any Contract, or subject to any Order, that would materially interfere with the use of such employee's best efforts to promote the interests of the Target Companies, or that would materially conflict with the business of any Target Company as presently conducted or contemplated to be conducted. Each Target Company has taken reasonable security measures in order to protect the secrecy, confidentiality and value of the material Company IP to the extent such Company IP derives value from the secrecy and/or confidentiality thereof.

(e) To the Knowledge of the Company, no Person has obtained unauthorized access to confidential third-party information and data in the possession of a Target Company, nor has there been any other material compromise of the security, confidentiality or integrity of such information or data. To the Knowledge of the Company, each Target Company has complied with all applicable Laws relating to privacy, personal data protection, and the collection, processing and use of personal information and its own privacy policies and guidelines. To the Knowledge of the Company, the operation of the business of the Target Companies has not and does not violate any right to privacy or publicity of any third party, or constitute unfair competition or trade practices under applicable Law. The Company has taken adequate precautions to protect, document and safeguard all trade secrets, know-how, confidential information, customer lists, software, technical information, data and process technology that relate to the business of the Company.

(f) The consummation of any of the Transactions will not result in the material breach, material modification, cancellation, termination, suspension of, or acceleration of any payments with respect to, or release of source code because of (i) any Contract providing for the license or other use of Intellectual Property owned by a Target Company, or (ii) any Company IP License. Following the Closing, the Company shall be permitted to exercise, directly or indirectly through its Subsidiaries, all of the Target Companies' rights under such Contracts or Company IP Licenses to the same extent that the Target Companies would have been able to exercise had the Transactions not occurred, without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Target Companies would otherwise be required to pay in the absence of such Transactions.

4.14 Taxes and Returns. Except as set forth on Schedule 4.14:

(a) Each Target Company has timely filed, or caused to be filed, all material Tax Returns required to be filed by it (taking into account all available extensions). All such Tax Returns are true, accurate, correct and complete in all material respects. All Taxes required to be paid, collected or withheld, other than such Taxes for which adequate reserves in the Company Financials have been established, have been timely paid, collected or withheld. Each Target Company has complied in all material respects with all applicable Laws relating to Tax.

(b) There is no current pending or, to the Knowledge of the Company, threatened Action against a Target Company by a Governmental Authority in a jurisdiction where a Target Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(c) No Target Company is being audited by any Tax authority or has been notified in writing or, to the Knowledge of the Company, orally by any Tax authority that any such audit is contemplated or pending. To the Knowledge of the Company, there are no claims, assessments, audits, examinations, investigations or other Actions pending against a Target Company in respect of any Tax, and no Target Company has been notified in writing of any proposed Tax claims or assessments against it (other than, in each case, claims or assessments for which adequate reserves in the Company Financials have been established).

(d) There are no Liens with respect to any Taxes upon any Target Company's assets, other than Permitted Liens.

(e) No Target Company has any outstanding waivers or extensions of any applicable statute of limitations to assess any material amount of Taxes. There are no outstanding requests by a Target Company for any extension of time within which to file any Tax Return or within which to pay any Taxes shown to be due on any Tax Return (other than an extension resulting from having received an automatic extension of time to file the applicable Tax Return not requiring the approval of any Governmental Authority).

(f) No Target Company has made any change in accounting method (except as required by a change in Law) or received a ruling from, or signed an agreement with, any taxing authority that would reasonably be expected to have a material impact on its Taxes following the Closing.

(g) No Target Company has engaged in any (i) "reportable transaction" as defined in Treasury Regulations Section 1.6011-4(b), (ii) "listed transaction," or (iii) transaction, a "significant" purpose of which is the avoidance or evasion of U.S. federal income Tax, within the meanings of Sections 6662, 6662A, 6011, 6012, 6111 or 6707A of the Code or the Treasury Regulations promulgated thereunder.

(h) Each Target Company has complied with, and is currently in compliance with, all transfer pricing rules and regulations (including, to the extent applicable, Section 482 of the Code and any comparable or similar provision of applicable Law). To the extent legally required, the Target Companies have properly and timely documented their transfer pricing methodology in compliance with Sections 482 and 6662 of the Code and any comparable or similar provision of applicable Law. No Target Company is a party to any advance pricing agreement or any similar Contract or agreement. No Target Company is subject to any gain recognition agreement under Section 367 of the Code.

(i) No Target Company has been, in the past five (5) years, a party to a transaction reported or intended to qualify as a reorganization under Section 368 of the Code.

(j) No Target Company has any Liability for the Taxes of another Person (other than another Target Company) (i) under any applicable Tax Law, (ii) as a transferee or successor, or (iii) by Contract, indemnity or otherwise (excluding commercial agreements entered into in the ordinary course of business the primary purpose of which was not the sharing of Taxes). No Target Company is a party to or bound by any Tax indemnity agreement, Tax sharing agreement or Tax allocation agreement or similar agreement, arrangement or practice (excluding commercial agreements entered into in the ordinary course of business the primary purpose of which was not the sharing of Taxes) with respect to Taxes (including advance pricing agreement, closing agreement or other agreement relating to Taxes with any Governmental Authority) that will be binding on such Target Company with respect to any period following the Closing Date.

(k) No Target Company has requested, or is the subject of or bound by any private letter ruling, technical advice memorandum, closing agreement or similar ruling, memorandum or agreement with any Governmental Authority with respect to any Taxes, nor is any such request outstanding.

(l) No Target Company: (i) has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of securities (to any Person or entity that is not a member of the consolidated group of which the Company is the common parent corporation) qualifying for, or intended to qualify for, Tax-free treatment under Section 355 of the Code (A) within the two-year period ending on the date hereof or (B) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Transactions; or (ii) is or has ever been (A) a U.S. real property holding corporation within the meaning of Section 897(c)(2) of the Code, or (B) a member of any consolidated, combined, unitary or affiliated group of corporations for any Tax purposes other than a group of which the Company is or was the common parent corporation.

(m) No Target Company is treated as a domestic corporation (as such term is defined in Section 7701 of the Code) for U.S. federal income tax purposes. No Target Company has ever been engaged in a U.S. trade or business (within the meaning of the Code).

(n) As a result of the Share Exchange, Buyer will satisfy the "active trade or business test" as defined in Treasury Regulation Section 1.367(a)-3(c)(3), including, without limitation, the requirements that (i) Buyer be engaged, directly or indirectly through a qualified Subsidiary or qualified partnership, in an active trade or business for the entire thirty-six (36) month period immediately preceding the Transactions, (ii) Buyer has no intention at the time of the Transactions to dispose of or discontinue such trade or business, and (iii) the substantiality test (as defined in Treasury Regulation Section 1.367(a)-3(c)(3)(iii)) will be satisfied.

(o) To the Knowledge of the Company, no Seller is subject to a binding commitment or has otherwise agreed to sell, exchange, transfer by gift or otherwise dispose of any of the shares of Buyer, or take any other action that would be reasonably likely to prevent the Share Exchange from qualifying as a transaction described in Section 351 of the Code.

(p) No Target Company, nor any of the respective Affiliates of any such Persons, have taken or have agreed to take any action, or is aware of any fact or circumstance, that would be reasonably likely to prevent the Share Exchange from qualifying as an exchange described in Section 351 of the Code.

(q) There are no actual or contingent Tax Liabilities of the Company in connection with (i) any acquisition of a company or any merger, de-merger or similar transaction involving the Company, or (ii) any shareholder loans or other transactions between the Company on the one hand and any of the Sellers or any of their Affiliates on the other hand.

(r) The Company has no permanent establishments *(Betriebsstätte im steuerrechtlichen Sinn)* in Switzerland or in any other country.

(s) The Company has not made any hidden profit distributions to shareholders or related parties at any time. No hidden capital contributions have been made to the Company at any time.

4.15 Real Property. Schedule 4.15 contains a complete and accurate list of all premises currently leased or subleased or otherwise used or occupied by a Target Company for the operation of the business of a Target Company, and of all current leases, lease guarantees, agreements and documents related thereto, including all amendments, terminations and modifications thereof or waivers thereto (collectively, the "***Company Real Property Leases***"), as well as the current annual rent and term under each Company Real Property Lease. The Company has provided to Buyer a true and complete copy of each of the Company Real Property Leases, and in the case of any oral Company Real Property Lease, a written summary of the material terms of such Company Real Property Lease. The Company Real Property Leases are valid, binding and enforceable in accordance with their terms and are in full force and effect. To the Knowledge of the Company, no event has occurred which (whether with or without notice, lapse of time or both or the happening or occurrence of any other event) would constitute a default on the part of a Target Company or any other party under any of the Company Real Property Leases, and no Target Company has received notice of any such condition. The Company has made no changes to Company Real Property Leases that will require material payments by the Company at termination of the lease to restore the leased premises to their original conditions. No Target Company owns any real property or any interest in real property (other than the leasehold interests in the Company Real Property Leases).

4.16 Personal Property. Each item of Personal Property which is currently owned, used or leased by a Target Company with a book value or fair market value of greater than Fifty Thousand Dollars ($50,000) is set forth on Schedule 4.16, along with, to the extent applicable, a list of lease agreements, lease guarantees, security agreements and other agreements related thereto, including all amendments, terminations and modifications thereof or waivers thereto ("***Company Personal Property Leases***"). Except as set forth in Schedule 4.16, all such items of Personal Property are in good operating condition and repair (reasonable wear and tear excepted consistent with the age of such items), and are suitable for their intended use in the business of the Target Companies. The operation of each Target Company's business as it is now conducted is not dependent upon the right to use the Personal Property of Persons other than a Target Company, except for such Personal Property that is owned, leased or licensed by, or otherwise contracted to, a Target Company. The Company has provided to Buyer a true and complete copy of each of the Company Personal Property Leases, and in the case of any oral Company Personal Property Lease, a written summary of the material terms of such the Company Personal Property Lease. The Company Personal Property Leases are valid, binding and enforceable in accordance with their terms and are in full force and effect. To the Knowledge of the Company, no event has occurred which (whether with or without notice, lapse of time or both or the happening or occurrence of any other event) would constitute a default on the part of a Target Company or any other party under any of the Company Personal Property Leases, and no Target Company has received notice of any such condition.

4.17 Title to and Sufficiency of Assets. Each Target Company has good and marketable title to, or a valid leasehold interest in or right to use, all of its assets, free and clear of all Liens other than (a) Permitted Liens, (b) the rights of lessors under leasehold interests, and (c) Liens specifically identified on the Company Balance Sheet. The assets (including Intellectual Property rights and contractual rights) of the Target Companies constitute all of the assets, rights and properties that are used in the operation of the businesses of the Target Companies as it is now conducted or that are used or held by the Target Companies for use in the operation of the businesses of the Target Companies, and, taken together, are adequate and sufficient for the operation of the businesses of the Target Companies as currently conducted.

4.18 Employee Matters.

(a) No Target Company is a party to any collective bargaining agreement or other Contract covering any group of employees, labor organization or other Representative of any of the employees of any Target Company and the Company has no Knowledge of any activities or proceedings of any labor union or other party to organize or represent such employees. There has not occurred or, to the Knowledge of the Company, been threatened any strike, slow-down, picketing, work-stoppage, or other similar labor activity with respect to any Target Company employees. There are no unresolved labor Actions (including unresolved grievances and age or other discrimination claims) that are pending or, to the Knowledge of the Company, threatened, between any Target Company and Persons employed by or providing services as independent contractors to a Target Company. No current officer or employee of a Target Company has provided any Target Company written or, to the Knowledge of the Company, oral notice of his or her plan to terminate his or her employment with any Target Company.

(b) Except as set forth in Schedule 4.18(b), each Target Company (i) is and has been in compliance for the past three (3) years in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, health and safety and wages and hours, and other Laws relating to discrimination, disability, labor relations, hours of work, payment of wages and overtime wages, pay equity, immigration, workers compensation, working conditions, employee scheduling, occupational safety and health, family and medical leave, and employee terminations, and has not received written or, to the Knowledge of the Company, oral notice that there is any pending Action involving unfair labor practices against a Target Company, (ii) is not liable for any material past due arrears of wages or any material penalty for failure to comply with any of the foregoing, and (iii) is not liable for any material payment to any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits or obligations for employees, independent contractors or consultants (other than routine payments to be made in the ordinary course of business and consistent with past practice). There are no Actions pending or, to the Knowledge of the Company, threatened against a Target Company brought by or on behalf of any applicant for employment, any current or former employee, any Person alleging to be a current or former employee, or any Governmental Authority, relating to any such Law or regulation, or alleging breach of any express or implied Contract of employment, wrongful termination of employment, or alleging any other discriminatory, wrongful or tortious conduct in connection with the employment relationship. No Target Company has received any report of any act or allegation of or relating to sex-based discrimination, sexual harassment, sexual misconduct, workplace harassment, or breach of any policy of any Target Company relating to the foregoing, in each case involving any employee, former employee or independent contractor or consultant, nor has there been any settlement or similar out-of-court or pre-litigation arrangement relating to any such matters, nor has any such action, settlement or other arrangement been proposed or, to the Company's Knowledge, threatened.

(c) Schedule 4.18(c) hereto sets forth a complete and accurate list as of the date hereof of all employees of the Target Companies showing for each as of such date the employee's name, job title or description, employer and location. Except as set forth on Schedule 4.18(c), (A) all employees are parties to a written employment Contract with a Target Company and (B) the Target Companies have paid in full to all their employees all wages, salaries, commission, bonuses and other compensation due to their employees, including overtime compensation, and no Target Company has any obligation or Liability (whether or not contingent) with respect to severance payments to any such employees under the terms of any written or, to the Company's Knowledge, oral agreement, or commitment or any applicable Law, custom, trade or practice. Except as set forth in Schedule 4.18(c), each Target Company employee has entered into the Company's standard employment agreement with a Target Company (whether pursuant to a separate agreement or incorporated as part of such employee's overall employment agreement), a copy of which has been made available to Buyer by the Company.

(d) Schedule 4.18(d) contains a list of all independent contractors (including consultants) currently engaged by any Target Company. Except as set forth on Schedule 4.18(c), all of such independent contractors are a party to a written Contract with a Target Company. Except as set forth on Schedule 4.18(d), each independent contractor is terminable on fewer than thirty (30) days' notice, without any obligation of any Target Company to pay severance or a termination fee.

4.19 Benefit Plans..

(a) Set forth on Schedule 4.19(a) is a true and complete list of each Foreign Plan of a Target Company (each, a "***Company Benefit Plan***"). No Target Company nor any ERISA Affiliate has ever established, maintained, contributed to, or has or had any Liability with respect to (or had an obligation to contribute to) any Benefit Plan, whether or not subject to ERISA, which is not a Foreign Plan.

(b) With respect to each Company Benefit Plan, the Company has made available to Buyer accurate and complete copies, if applicable, of: (i) the current plan documents and currently effective related trust agreements or annuity Contracts (including any amendments, modifications or supplements thereto), and written descriptions of the material terms of any Company Benefit Plans which are not in writing; (ii) the most recent actuarial valuation; and (iv) all material non-routine communications with any Governmental Authority within the past three (3) years concerning any matter that is still pending or for which a Target Company has any outstanding Liability or obligation.

(c) With respect to each Company Benefit Plan: (i) such Company Benefit Plan (1) has been administered and enforced in all material respects in accordance with its terms and the requirements of all applicable Laws, and (2) has been maintained, where required, in good standing with applicable regulatory authorities and Governmental Authorities (iii) no Action is pending, or to the Company's Knowledge, threatened (other than routine claims for benefits arising in the ordinary course of administration); and (iv) all contributions, premiums and other payments (including any special contribution, interest or penalty) required to be made with respect to a Company Benefit have in all material respects been timely made. No Target Company has incurred, or will incur in connection with the Transactions, any material Liability in connection with termination of, or withdrawal from, any Company Benefit Plan, except for customary administrative charges.

(d) To the extent applicable, the present value of the accrued benefit Liabilities (whether or not vested) under each Company Benefit Plan, determined as of the end of the Company's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Company Benefit Plan allocable to such benefit Liabilities or have been accrued in all material respects on the Company Financials.

(e) The Company is not, nor will be, obligated, whether under any Company Benefit Plan or otherwise, to pay separation, severance, termination or similar benefits to any Person as a result of any Transaction, nor will any Transaction accelerate the time of payment or vesting, or increase the amount, of any benefit or other compensation due to any Person. The Transactions shall not be the direct or indirect cause of any amount paid or payable by a Target Company being classified as an "excess parachute payment" under Section 280G of the Code and no arrangement exists pursuant to which the Company or any Target Company will be required to "gross up" or otherwise compensate any Person because of the imposition of any excise tax under Section 4999 on a payment to such Person.

4.20 Environmental Matters. Except as set forth in Schedule 4.20:

(a) Each Target Company is and has been in compliance in all material respects with all applicable Environmental Laws, including obtaining, maintaining in good standing, and complying in all material respects with all Environmental Permits required for its business and operations, no Action is pending or, to the Company's Knowledge, threatened to revoke, modify, or terminate any such Environmental Permit, and, to the Company's Knowledge, no facts, circumstances, or conditions currently exist that could adversely affect such continued compliance with Environmental Laws and Environmental Permits or require capital expenditures to achieve or maintain such continued compliance with Environmental Laws and Environmental Permits.

(b) No Target Company is the subject of any outstanding Order or Contract with any Governmental Authority or other Person in respect of any (i) Environmental Laws, (ii) Remedial Action, or (iii) Release or threatened Release of a Hazardous Material. No Target Company has assumed, contractually or by operation of Law, any Liabilities or obligations under any Environmental Laws.

(c) No Action has been made or is pending, or to the Company's Knowledge, threatened against any Target Company or any assets of a Target Company alleging either or both that a Target Company may be in material violation of any Environmental Law or Environmental Permit or may have any material Liability under any Environmental Law.

(d) No Target Company has manufactured, treated, stored, disposed of, arranged for or permitted the disposal of, generated, handled or Released any Hazardous Material, or owned or operated any property or facility, in a manner that has given or would reasonably be expected to give rise to any material Liability or obligation under applicable Environmental Laws. No fact, circumstance, or condition exists in respect of any Target Company or any property currently or formerly owned, operated, or leased by any Target Company or any property to which a Target Company arranged for the disposal or treatment of Hazardous Materials that could reasonably be expected to result in a Target Company incurring any material Environmental Liabilities.

(e) There is no investigation of the business, operations, or currently owned, operated, or leased property of a Target Company or, to the Company's Knowledge, previously owned, operated, or leased property of a Target Company pending or, to the Company's Knowledge, threatened that could lead to the imposition of any Liens under any Environmental Law or material Environmental Liabilities.

(f) To the Knowledge of the Company, there is not located at any of the properties of a Target Company any (i) underground storage tanks, (ii) asbestos-containing material, or (iii) equipment containing polychlorinated biphenyls.

(g) The Company has provided to Buyer all environmentally related site assessments, audits, studies, reports, analysis and results of investigations that have been performed in respect of the currently or previously owned, leased, or operated properties of any the Target Company.

4.21 Transactions with Related Persons. No Target Company nor any of its Related Persons is presently, or in the past three (3) years, has been, a party to any transaction with a Target Company, including any Contract or other arrangement (a) providing for the furnishing of services by (other than as officers, directors or employees of the Target Company), (b) providing for the rental of real property or Personal Property from or (c) otherwise requiring payments to (other than for services or expenses as directors, officers or employees of the Target Company in the ordinary course of business consistent with past practice) any Related Person or any Person in which any Related Person has an interest as an owner, officer, manager, director, trustee or partner or in which any Related Person has any direct or indirect interest (other than the ownership of securities representing no more than two percent (2%) of the outstanding voting power or economic interest of a publicly traded company). No Target Company has outstanding any Contract or other arrangement or commitment with any Related Person, and no Related Person owns any real property or Personal Property, or right, tangible or intangible (including Intellectual Property) which is used in the business of any Target Company. The assets of the Target Companies do not include any receivable or other obligation from a Related Person, and the Liabilities of the Target Companies do not include any payable or other obligation or commitment to any Related Person other than employment agreements entered at arm's length terms. Schedule 4.21 specifically identifies all Contracts, arrangements or commitments set forth on such Schedule 4.21 that cannot be terminated upon sixty (60) days' notice by the Target Companies without cost or penalty other than employment agreements entered at arm's length terms.

4.22 Business Insurance.

(a) Schedule 4.22(a) lists all insurance policies (by policy number, insurer, coverage period, coverage amount, annual premium and type of policy) held by a Target Company relating to a Target Company or its business, properties, assets, directors, officers and employees, copies of which have been provided to Buyer. All premiums due and payable under all such insurance policies have been timely paid and the Target Companies are otherwise in material compliance with the terms of such insurance policies. Each such insurance policy (i) is legal, valid, binding, enforceable and in full force and effect and (ii) will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the Closing. No Target Company has any self-insurance or co-insurance programs. Since January 1, 2021, no Target Company has received any notice from, or on behalf of, any insurance carrier relating to or involving any adverse change or any change other than in the ordinary course of business, in the conditions of insurance, any refusal to issue an insurance policy or non-renewal of a policy.

(b) Schedule 4.22(b) identifies each individual insurance claim in excess of $50,000 made by a Target Company since January 1, 2021. Each Target Company has reported to its insurers all claims and pending circumstances that would reasonably be expected to result in a claim, except where such failure to report such a claim would not be reasonably likely to be material to the Target Companies. To the Knowledge of the Company, no event has occurred, and no condition or circumstance exists, that would reasonably be expected to (with or without notice or lapse of time) give rise to or serve as a basis for the denial of any such insurance claim. No Target Company has made any claim against an insurance policy as to which the insurer is denying coverage.

4.23 Top Customers and Suppliers. Schedule 4.23 lists, by dollar volume received or paid, as applicable, for each of (a) the twelve (12) months ended on December 31, 2022 and (b) the period from January 1, 2023 through the Company Balance Sheet Date, the ten (10) largest customers of the Target Companies (the "***Company Top Customers***") and the ten largest suppliers of goods or services to the Target Companies (the "***Company Top Vendors***"), along with the amounts of such dollar volumes. The relationships of each Target Company with such suppliers and customers are good commercial working relationships and (i) no Company Top Vendor or Company Top Customer within the last twelve (12) months has cancelled or otherwise terminated, or, to the Company's Knowledge, intends to cancel or otherwise terminate, any material relationships of such Person with a Target Company, (ii) no Company Top Vendor or Company Top Customer has during the last twelve (12) months decreased materially or, to the Company's Knowledge, threatened to stop, decrease or limit materially, or intends to modify materially its material relationships with a Target Company or intends to stop, decrease or limit materially its products or services to any Target Company or its usage or purchase of the products or services of any Target Company, (iii) to the Company's Knowledge, no Company Top Vendor or Company Top Customer intends to refuse to pay any amount due to any Target Company or seek to exercise any remedy against any Target Company, (iv) no Target Company has within the past two (2) years been engaged in any material dispute with any Company Top Vendor or Company Top Customer, and (v) to the Company's Knowledge, the consummation of the Transactions and the Ancillary Documents will not adversely affect the relationship of any Target Company with any Company Top Vendor or Company Top Customer.

4.24 Certain Business Practices.

(a) No Target Company, nor any of their respective Representatives acting on their behalf has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees, to foreign or domestic political parties or campaigns or violated any provision of the U.S. Foreign Corrupt Practices Act of 1977 or any other local or foreign anti-corruption or bribery Law, (iii) made any other unlawful payment or (iv) since January 1, 2021, directly or indirectly given or agreed to give any unlawful gift or similar benefit in any material amount to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder any Target Company or assist any Target Company in connection with any actual or proposed transaction.

(b) The operations of each Target Company are and have been conducted at all times in compliance with money laundering statutes in all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority, and no Action involving a Target Company with respect to the any of the foregoing is pending or, to the Knowledge of the Company, threatened.

(c) No Target Company or any of their respective directors or officers, or, to the Knowledge of the Company, any other Representative acting on behalf of a Target Company is currently identified on the specially designated nationals or other blocked person list or otherwise currently subject to any U.S. sanctions administered by OFAC, and no Target Company has, directly or indirectly, used any funds, or loaned, contributed or otherwise made available such funds to any Subsidiary, joint venture partner or other Person, in connection with any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to, or otherwise in violation of, any U.S. sanctions administered by OFAC in the last five (5) fiscal years.

4.25 Investment Company Act. No Target Company is an "investment company" or a Person directly or indirectly "controlled" by or acting on behalf of an "investment company", in each case within the meaning of the Investment Company Act.

4.26 Finders and Brokers. Except as set forth in Schedule 4.26, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company, the Target Companies or any of their respective Affiliates in connection with the Transactions contemplated hereby based upon arrangements made by or on behalf of any Target Company.

4.27 No Subsidies. No Target Company has received any subsidies, aid or relief from any Governmental Authority or organization (including but not limited to Tax relief), which will be or may have to be repaid due to the execution or the consummation of the transactions contemplated by this Agreement or otherwise.

4.28 Information Supplied. None of the information supplied or to be supplied by the Company expressly for inclusion or incorporation by reference: (a) in any current report on Form 8-K, and any exhibits thereto or any other report, form, registration or other filing made with any Governmental Authority (including the SEC) with respect to the Transactions or any Ancillary Documents; (b) in the Registration Statement; or (c) in the mailings or other distributions to Buyer's stockholders and/or prospective investors with respect to the consummation of the Transactions or in any amendment to any of documents identified in (a) through (c), will, when filed, made available, mailed or distributed, as the case may be, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by the Company expressly for inclusion or incorporation by reference in any of the Closing Press Release and the Closing Filing will, when filed or distributed, as applicable, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing, the Company makes no representation, warranty or covenant with respect to any information supplied by or on behalf of Buyer or its Affiliates.

4.29 Independent Investigation. The Company has conducted its own independent investigation, review and analysis of the business, results of operations, condition (financial or otherwise) or assets of Buyer and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Buyer for such purpose. The Company acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the Transactions, it has relied solely upon its own investigation and the express representations and warranties of Buyer set forth in this Agreement (including the related portions of the Buyer Disclosure Schedules) and in any certificate delivered to the Company pursuant hereto, and the information provided by or on behalf of Buyer for the Registration Statement; and (b) none of Buyer or its Representatives have made any representation or warranty as to Buyer, except as expressly set forth in this Agreement (including the related portions of the Buyer Disclosure Schedules) or in any certificate delivered to the Company pursuant hereto.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except as set forth in the Seller Disclosure Schedules, the Section numbers of which are numbered to correspond to the Section numbers of this Agreement to which they refer, each Seller, severally and not jointly, hereby represents and warrants to the Company and Buyer as follows:

5.1 Organization and Standing. Such Seller, if not an individual, is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

5.2 Authorization; Binding Agreement. Such Seller has all requisite power, authority and legal right and, if an individual, capacity, to execute and deliver this Agreement and each Ancillary Document to which it is a party, to perform such Seller's obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been, and each Ancillary Document to which such Seller is or is required to be a party has been or shall be when delivered, duly and validly executed and delivered by such Seller and assuming the due authorization, execution and delivery of this Agreement and any such Ancillary Document by the other parties hereto and thereto, constitutes, or when delivered shall constitute, the legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject to the Enforceability Exceptions. No other corporate proceedings, other than as set forth elsewhere in the Agreement, on the part of such Seller or the Company are necessary to authorize the execution and delivery by such Seller of this Agreement and each Ancillary Document to which such Seller is a party or to consummate the transactions contemplated hereby and thereby.

5.3 Ownership. Such Seller owns good, valid and marketable title to the Purchased Shares set forth opposite such Seller's name on Annex I attached hereto, free and clear of any and all Liens (other than those imposed by applicable securities Laws or the Company's Organizational Documents). There are no proxies, voting rights, shareholders' agreements or other agreements or understandings, to which such Seller is a party or by which such Seller is bound, with respect to the voting or transfer of any of such Seller's Purchased Shares other than this Agreement. Upon delivery of such Seller's Purchased Shares to Buyer on the Closing Date in accordance with this Agreement, the entire legal and beneficial interest in such Purchased Shares and good, valid and marketable title to such Purchased Shares, free and clear of all Liens (other than those imposed by applicable securities Laws or those incurred by Buyer), will pass to Buyer.

5.4 Governmental Approvals. No Consent of or with any Governmental Authority on the part of such Seller is required to be obtained or made in connection with the execution, delivery or performance by such Seller of this Agreement or any Ancillary Documents or the consummation by such Seller of the transactions contemplated hereby or thereby other than (a) such filings as expressly contemplated by this Agreement, (b) pursuant to Antitrust Laws, (c) any filings required with Nasdaq or the SEC with respect to the Transactions, (d) applicable requirements, if any, of the Securities Act, the Exchange Act, and/or any state "blue sky" securities Laws, and the rules and regulations thereunder, and (e) where the failure to obtain or make such Consents or to make such filings or notifications, would not reasonably be expected to materially impair or delay the ability of such Seller to consummate the Transactions.

5.5 Non-Contravention. The execution and delivery by such Seller of this Agreement and each Ancillary Document to which it is a party or otherwise bound and the consummation by such Seller of the transactions contemplated hereby and thereby, and compliance by such Seller with any of the provisions hereof and thereof, will not, (a) if such Seller is an entity, conflict with or violate any provision of such Seller's Organizational Documents, (b) conflict with or violate any Law, Order or Consent applicable to such Seller or any of its properties or assets or (c) (i) violate, conflict with or result in a breach of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination, withdrawal, suspension, cancellation or modification of, (iv) accelerate the performance required by such Seller under, (v) result in a right of termination or acceleration under, (vi) give rise to any obligation to make payments or provide compensation under, (vii) result in the creation of any Lien upon any of the properties or assets of such Seller under, (viii) give rise to any obligation to obtain any third party Consent or provide any notice to any Person or (ix) give any Person the right to declare a default, exercise any remedy, claim a rebate, chargeback, penalty or change in delivery schedule, accelerate the maturity or performance, cancel, terminate or modify any right, benefit, obligation or other term under, any of the terms, conditions or provisions of, any Contract to which such Seller is a party or such Seller or its properties or assets are otherwise bound, except for any deviations from the foregoing clause (c) that has not had and would not reasonably be expected to materially impair or delay the ability of such Seller to consummate the Transactions.

5.6 No Litigation. There is no Action pending or, to the Knowledge of such Seller, threatened, nor any Order is outstanding, against or involving such Seller, whether at law or in equity, before or by any Governmental Authority, which would reasonably be expected to materially and adversely affect the ability of such Seller to consummate the transactions contemplated by, and discharge its obligations under, this Agreement and the Ancillary Documents to which such Seller is or is required to be a party.

5.7 Investment Representations. Such Seller (a) is either not a "U.S. Person," as such term is defined in Rule 902 of Regulation S under the Securities Act, or is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D under the Securities Act; (b) is acquiring its portion of the Exchange Shares for itself for investment purposes only, and not with a view towards any resale or distribution of such Exchange Shares; (c) has been advised and understands that the Exchange Shares (i) are being issued in reliance upon one or more exemptions from the registration requirements of the Securities Act and any applicable state securities Laws, (ii) have not been registered under the Securities Act or any applicable state securities Laws and, therefore, must be held indefinitely and cannot be resold unless such Exchange Shares are registered under the Securities Act and all applicable state securities Laws, unless exemptions from registration are available, and (iii) are subject to additional restrictions on transfer pursuant to such Seller's Lock-Up Agreement; and (d) is aware that an investment in Buyer is a speculative investment and is subject to the risk of complete loss. Such Seller does not have any Contract with any Person to sell, transfer, or grant participations to such Person, or to any third Person, with respect to the Exchange Shares. Such Seller is capable of evaluating the risks and merits of an investment in Buyer and of protecting its interests in connection with this investment. Such Seller has carefully read and understands all materials provided by or on behalf of Buyer or its Representatives to such Seller or such Seller's Representatives pertaining to an investment in Buyer and has consulted, as such Seller has deemed advisable, with its own attorneys, accountants or investment advisors with respect to the investment contemplated hereby and its suitability for such Seller. Such Seller acknowledges that the Exchange Shares are subject to dilution for events not under the control of such Seller. Such Seller has completed its independent inquiry and has relied fully upon the advice of its own legal counsel, accountant, financial and other Representatives in determining the legal, tax, financial and other consequences of this Agreement and the transactions contemplated hereby and the suitability of this Agreement and the transactions contemplated hereby for such Seller and its particular circumstances, and, except as set forth herein, has not relied upon any representations or advice by Buyer or its Representatives. Such Seller acknowledges and agrees that, except as set forth in Article III (including the related portions of the Buyer Disclosure Schedules), no representations or warranties have been made by Buyer or any of its Representatives, and that such Seller has not been guaranteed or represented to by any Person, (i) any specific amount or the event of the distribution of any cash, property or other interest in Buyer or (ii) the profitability or value of the Exchange Shares in any manner whatsoever. Such Seller: (A) has been represented by independent counsel (or has had the opportunity to consult with independent counsel and has declined to do so); (B) has had the full right and opportunity to consult with such Seller's attorneys and other advisors and has availed itself of this right and opportunity; (C) has carefully read and fully understands this Agreement in its entirety and has had it fully explained to it or him by such counsel; (D) is fully aware of the contents hereof and the meaning, intent and legal effect thereof; and (E) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

5.8 Finders and Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from such Seller or any of its Affiliates in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of such Seller.

5.9 Information Supplied. None of the information supplied or to be supplied by such Seller expressly for inclusion or incorporation by reference: (a) in any Current Report on Form 8-K, and any exhibits thereto or any other report, form, registration or other filing made with any Governmental Authority (including the SEC) with respect to the Transactions or any Ancillary Documents; (b) in the Registration Statement; or (c) in the mailings or other distributions to Buyer's stockholders and/or prospective investors with respect to the consummation of the Transactions or in any amendment to any of documents identified in (a) through (c), will, when filed, made available, mailed or distributed, as the case may be, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. None of the information supplied or to be supplied by such Seller expressly for inclusion or incorporation by reference in any of the Closing Filing and the Closing Press Release will, when filed or distributed, as applicable, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing, such Seller does not make any representation, warranty or covenant with respect to any information supplied by or on behalf of Buyer or its Affiliates.

5.10 Independent Investigation. Such Seller has conducted its own independent investigation, review and analysis of the business, results of operations, condition (financial or otherwise) or assets of Buyer and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Buyer for such purpose. Such Seller acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, such Seller has relied solely upon its own investigation and the express representations and warranties of Buyer set forth in this Agreement (including the related portions of the Buyer Disclosure Schedules) and in any certificate delivered to such Seller pursuant hereto, and the information provided by or on behalf of Buyer for the Registration Statement; and (b) neither Buyer not its Representatives have made any representation or warranty as to Buyer, except as expressly set forth in this Agreement (including the related portions of the Buyer Disclosure Schedules) or in any certificate delivered to such Seller pursuant hereto.

ARTICLE VI
OTHER AGREEMENTS OF THE PARTIES

6.1 Access and Information. During the period from the Closing until the Conversion (the "***Interim Period***"), Buyer shall give, and shall cause its Representatives to give, the Sellers' Representatives, at reasonable times during normal business hours and upon reasonable intervals and notice, reasonable access to all offices and other facilities and to all employees, properties, Contracts, agreements, commitments, books and records, financial and operating data and other information (including Tax Returns, internal working papers, client files, client Contracts and director service agreements), of or pertaining to Buyer or its Subsidiaries, as the Sellers' Representatives may reasonably request regarding Buyer, its Subsidiaries and their respective businesses, assets, Liabilities, financial condition, prospects, operations, management, employees and other aspects (including unaudited quarterly financial statements, including a consolidated quarterly balance sheet and income statement, a copy of each material report, schedule and other document filed with or received by a Governmental Authority pursuant to the requirements of applicable securities Laws, and independent public accountants' work papers (subject to the consent or any other conditions required by such accountants, if any)) and cause each of Buyer's Representatives to reasonably cooperate with the Sellers' Representatives in his investigation*; provided, however,* that the Sellers' Representatives shall conduct any such activities in such a manner as not to unreasonably interfere with the business or operations of Buyer or any of its Subsidiaries.

6.2 Litigation Support. Following the Closing, in the event that and for so long as any party is actively contesting or defending against any Action in connection with any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction that existing on or prior to the Closing Date involving the Company, each of the other parties will (i) reasonably cooperate with the contesting or defending party and its counsel in the contest or defense, (ii) make available its personnel at reasonable times during normal business hours and upon reasonable notice and (iii) provide (A) such testimony and (B) access to its non-privileged books and records as may be reasonably requested in connection with the contest or defense, at the sole cost and expense of the contesting or defending party (unless such contesting or defending party is entitled to indemnification therefor Article VII in which case, the costs and expense will be borne by the parties as set forth in Article VII).

6.3 No Trading. The Company and the Sellers each acknowledge and agree that it is aware, and that their respective Affiliates are aware (and each of their respective Representatives is aware or, upon receipt of any material nonpublic information of Buyer, will be advised) of the restrictions imposed by U.S. federal securities laws and the rules and regulations of the SEC and Nasdaq promulgated thereunder or otherwise (the "***Federal Securities Laws***") and other applicable foreign and domestic Laws on a Person possessing material nonpublic information about a publicly traded company. The Company, Buyer, the Sellers and the Sellers Representative each hereby agree that, while it is in possession of such material nonpublic information, it shall not purchase or sell any securities of Buyer, communicate such information to any third party, take any other action with respect to Buyer in violation of such Laws, or cause or encourage any third party to do any of the foregoing.

6.4 Efforts.

(a) Subject to the terms and conditions of this Agreement, each Party shall use its commercially reasonable efforts, and shall cooperate fully with the other Parties, to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws and regulations to consummate the Transactions (including the receipt of all applicable Consents of Governmental Authorities) and to comply as promptly as practicable with all requirements of Governmental Authorities applicable to the Transactions. Without limiting the foregoing, each Party shall use its commercially reasonable efforts, and shall cooperate fully with the other Parties, to as soon as practicable obtain from each holder of more than five percent (5%) of Buyer's voting stock and each director and executive officer of Buyer a duly executed Parent Stockholder Support Agreement in the form attached as Exhibit C.

6.5 Further Assurances. The Parties hereto shall further cooperate with each other and use their respective commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on their part under this Agreement and applicable Laws to consummate the Transactions as soon as reasonably practicable, including preparing and filing as soon as practicable all documentation to effect all necessary notices, reports and other filings.

6.6 Conduct of Business Prior to Conversion.

(a) Unless the Sellers' Representative shall otherwise consent in writing (such consent not to be unreasonably withheld, conditioned or delayed), during the Interim Period, except as expressly contemplated by this Agreement or the Ancillary Documents or as set forth on Schedule 6.5 Buyer shall, and shall cause its Subsidiaries to, (i) conduct their respective businesses, in all material respects, in the ordinary course of business consistent with past practice, (ii) comply with all Laws applicable to Buyer and its Subsidiaries and their respective businesses, assets and employees, and (iii) take all commercially reasonable measures necessary or appropriate to preserve intact, in all material respects, their respective business organizations, to keep available the services of their respective managers, directors, officers, employees and consultants, and to preserve the possession, control and condition of their respective material assets, all as consistent with past practice.

(b) Without limiting the generality of Section 6.6(a) and except as contemplated, permitted or required by the terms of this Agreement or the Ancillary Documents or as required by applicable Law or as set forth on Schedule 6.5, during the Interim Period, without the prior written consent of the Sellers' Representative (such consent not to be unreasonably withheld, conditioned or delayed), Buyer shall not, and shall cause its Subsidiaries to not:

(i) amend, waive or otherwise change, in any respect, its Organizational Documents except as required by applicable Law except in connection with a Permitted Financing;

(ii) (A) authorize for issuance, issue, grant, sell, pledge, dispose of or propose to issue, grant, sell, pledge or dispose of any of its equity securities or any options, warrants, commitments, subscriptions or rights of any kind to acquire or sell any of its equity securities, or other securities, including any securities convertible into or exchangeable for any of its equity securities or other security interests of any class and any other equity-based awards, other than the issuance of the Buyer Common Stock issuable upon conversion of the Preferred Shares or (B) engage in any hedging transaction with a third Person with respect to such securities, except, in each case of (A) and (B), pursuant to a Company Benefit Plan or in connection with a Permitted Financing;

(iii) split, combine, recapitalize or reclassify any of its shares or other equity interests or issue any other securities in respect thereof or pay or set aside any dividend or other distribution (whether in cash, equity or property or any combination thereof) in respect of its shares or other equity interests, or directly or indirectly redeem, purchase or otherwise acquire or offer to acquire any of its securities;

(iv) incur, create, assume, prepay or otherwise become liable for any Indebtedness (directly, contingently or otherwise) in excess of $500,000 individually or $1,000,000 in the aggregate, make a loan or advance to or investment in any third party, or guarantee or endorse any Indebtedness, Liability or obligation of any Person, except in connection with a Permitted Financing;

(v) make or rescind any material election relating to Taxes, settle any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, file any amended Tax Return or claim for refund, or make any material change in its accounting or Tax policies or procedures, in each case except as required by applicable Law or in compliance with U.S. GAAP;

(vi) terminate, waive or assign any material right under any Buyer Material Contract or Company Material Contract other than in the ordinary course of business;

(vii) fail to maintain its books, accounts and records in all material respects in the ordinary course of business consistent;

(viii) establish any Subsidiary or enter into any new line of business;

(ix) fail to use commercially reasonable efforts to keep in force insurance policies or replacement or revised policies providing insurance coverage with respect to its assets, operations and activities in such amount and scope of coverage substantially similar to that which is currently in effect;

(x) revalue any of its material assets or make any material change in accounting methods, principles or practices, except to the extent required to comply with U.S. GAAP and after consulting Buyer's outside auditors;

(xi) waive, release, assign, settle or compromise any claim, action or proceeding (including any suit, action, claim, proceeding or investigation relating to this Agreement or the transactions contemplated hereby), other than waivers, releases, assignments, settlements or compromises that involve only the payment of monetary damages (and not the imposition of equitable relief on, or the admission of wrongdoing by, Buyer or its Subsidiary) not in excess of $500,000 (individually or in the aggregate), or otherwise pay, discharge or satisfy any Actions, Liabilities or obligations, unless such amount has been reserved in the Buyer Financials;

(xii) acquire, including by merger, consolidation, acquisition of equity interests or assets, or any other form of business combination, any corporation, partnership, limited liability company, other business organization or any division thereof, or any material amount of assets outside the ordinary course of business;

(xiii) make capital expenditures in excess of $500,000 individually for any project (or set of related projects) or $1,000,000 in the aggregate;

(xiv) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

(xv) voluntarily incur any Liability or obligation (whether absolute, accrued, contingent or otherwise) in excess of $500,000 individually or $1,000,000 in the aggregate other than pursuant to the terms of a Contract in existence as of the date of this Agreement or entered into in the ordinary course of business or in accordance with the terms of this Section 6.6 during the Interim Period, except in connection with a Permitted Financing;

(xvi) sell, lease, license, transfer, exchange or swap, mortgage or otherwise pledge or encumber (including securitizations), or otherwise dispose of any material portion of its properties, assets or rights;

(xvii) enter into any agreement, understanding or arrangement with respect to the voting of Buyer Common Stock, except in connection with a Permitted Transaction or Permitted Financing;

(xviii) take any action that would reasonably be expected to significantly delay or impair the obtaining of any Consents of any Governmental Authority to be obtained in connection with this Agreement; or

(xix) authorize or agree to do any of the foregoing actions.

Buyer shall notify the Company in writing of any such actions taken in accordance with the foregoing proviso and shall use commercially reasonable efforts to mitigate any negative effects of such actions on Buyer and its Subsidiaries.

6.7 Buyer Public Filings. During the Interim Period, Buyer will keep current and timely file all of its public filings with the SEC and otherwise comply in all material respects with applicable securities Laws and shall use its commercially reasonable efforts prior to the Conversion to maintain the listing of Buyer Common Stock on Nasdaq.

6.8 The Registration Statement .

(a) As promptly as practicable after the date hereof, Buyer shall prepare with the assistance of the Company and file with the SEC a registration statement on Form S-1, Form S-4 or similar form (as amended or supplemented from time to time, the "***Registration Statement***") in connection with the registration under the Securities Act of the Buyer Securities to be issued under this Agreement prior to the Closing, and the resale thereof, as applicable, and the Buyer Common Stock underlying the Buyer Preferred Stock, and will also prepare a proxy statement of Buyer (as amended, the "***Proxy Statement***") for the purpose of soliciting proxies from Buyer stockholders for the matters to be acted upon at the Special Stockholder Meeting.

(b) The Proxy Statement shall include proxy materials for the purpose of soliciting proxies from Buyer stockholders to vote, at a special meeting of Buyer stockholders to be called and held for such purpose (the "***Special Stockholder Meeting***"), in favor of resolutions approving (A) the issuance of shares of Buyer Common Stock in connection with the Conversion, by the holders of Buyer Common Stock in accordance with Buyer's Organizational Documents and the rules and regulations of the SEC and Nasdaq, (B) amendment of Buyer's Certificate of Incorporation to authorize sufficient additional shares of Common Stock to permit the Conversion, (C) the appointment of the members of the Post-Stockholder Approval Buyer Board, in each case in accordance with Section 6.12 hereof, and (D) such other matters as the Company and Buyer shall hereafter mutually determine to be necessary or appropriate in order to effect the Transactions (the approvals described in foregoing clauses (A) through (D), collectively, the "***Stockholder Approval Matters***"), and (E) the adjournment of the Special Stockholder Meeting, if necessary or desirable in the reasonable determination of Buyer.

(c) If, on the date one day immediately preceding the date for which the Special Stockholder Meeting is scheduled, Buyer reasonably believes that it will not receive proxies representing a sufficient number of shares to obtain the Stockholder Approval, whether or not a quorum is present, or, Buyer will not have sufficient shares of Buyer common stock to constitute a quorum, Buyer may in its sole discretion make one or more successive postponements or adjournments of the Special Stockholder Meeting as long as such Special Stockholder Meeting is not postponed more than five days for each postponement or adjournment or an aggregate of ten days for all such postponements or adjournments. In connection with the Registration Statement and the Proxy Statement, Buyer shall file with the SEC financial and other information about the Transactions in accordance with applicable Law and applicable proxy solicitation and registration statement rules set forth in Buyer's Organizational Documents and the rules and regulations of the SEC and Nasdaq. Buyer shall cooperate and provide the Company (and its counsel) with a reasonable opportunity to review and comment on the Registration Statement and the Proxy Statement and any amendment or supplement thereto prior to filing the same with the SEC. The Company shall provide Buyer with such information concerning the Target Companies and their equity holders, officers, directors, employees, assets, Liabilities, condition (financial or otherwise), business and operations that may be required or appropriate for inclusion in the Registration Statement or Proxy Statement, or in any amendments or supplements thereto, which information provided by the Company shall be true and correct and not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not materially misleading.

(d) Buyer shall use commercially reasonable best efforts to have the Proxy Statement filed with the SEC as promptly as reasonably practicable. Buyer shall take any and all reasonable and necessary actions required to satisfy the requirements of the Securities Act, the Exchange Act and other applicable Laws in connection with the Proxy Statement and the Special Stockholder Meeting, respectively. Each of Buyer and the Company shall, and shall cause each of its Subsidiaries to, make their respective directors, officers and employees, upon reasonable advance notice, available to the Company, Buyer and their respective Representatives in connection with the drafting of the public filings with respect to the Transactions, including the Registration Statement and the Proxy Statement, and responding in a timely manner to comments from the SEC. Each Party shall promptly correct any information provided by it for use in the Registration Statement and the Proxy Statement (and other related materials) if and to the extent that such information is determined to have become false or misleading in any material respect or as otherwise required by applicable Laws. Buyer shall amend or supplement the Proxy Statement and cause the Proxy Statement, as so amended or supplemented, to be filed with the SEC and to be disseminated to Buyer's stockholders to the extent required by applicable Laws and subject to the terms and conditions of this Agreement and Buyer's Organizational Documents; provided, however, Buyer may not amend the Proxy Statement without Buyer's written consent.

(e) Buyer, with the assistance of the other Parties, shall promptly respond to any SEC comments on the Registration Statement and Proxy Statement and shall otherwise use their commercially reasonable efforts to cause the Registration Statement and Proxy Statement to "clear" comments from the SEC and become effective, as applicable. Buyer shall provide the Company with copies of any written comments, and shall inform the Company of any material oral comments, that Buyer or their respective Representatives receive from the SEC or its staff with respect to the Registration Statement and Proxy Statement, the Special Stockholder Meeting promptly after the receipt of such comments and shall give the Company a reasonable opportunity under the circumstances to review and comment on any proposed written or material oral responses to such comments. Buyer shall use its commercially reasonable efforts to maintain the effectiveness of the Registration Statement until such time that all restrictive legends have been removed in respect to the Buyer Securities registered under the Registration Statement pursuant to this Section 6.8.

(f) As soon as practicable following the Proxy Statement "clearing" comments from the SEC, Buyer shall distribute the Proxy Statement to Buyer's stockholders and, pursuant thereto, shall call the Special Stockholder Meeting. Buyer agrees that: (i) Buyer's Board shall recommend that the holders of Buyer Common Stock vote to approve the Stockholder Approval Matters and shall use commercially reasonable efforts to solicit such approval within the timeframe set forth in this Section 6.8, (ii) the Proxy Statement shall include a statement to the effect that Buyer's Board recommends that Buyer's stockholders vote to approve the Stockholder Approval Matters.

(g) Buyer shall comply with all applicable Laws, any applicable rules and regulations of Nasdaq, Buyer's Organizational Documents and this Agreement in the preparation, filing and distribution of the Proxy Statement, any solicitation of proxies thereunder, the calling and holding of the Special Stockholder Meeting.

6.9 Nasdaq Change of Control Application. The Parties shall use commercially reasonable best efforts to ensure that the application for Buyer's change of control is filed with Nasdaq (the "***Nasdaq Change of Control Application***"). Each of the Parties shall use commercially reasonable best efforts to respond to any questions from Nasdaq with respect to the Nasdaq Change of Control Application promptly following receipt of such questions, but in no event later than ten (10) Business Days following receipt of such questions.

6.10 Public Announcements.

(a) The Parties agree that no public release, filing or announcement concerning this Agreement or the Ancillary Documents or the transactions contemplated hereby or thereby shall be issued by any Party or any of their Affiliates without the prior written consent (not be unreasonably withheld, conditioned or delayed) of Buyer and the Company, except as such release or announcement may be required by applicable Law or the rules or regulations of any securities exchange, in which case the applicable Party shall use commercially reasonable efforts to allow the other Parties reasonable time to comment on, and arrange for any required filing with respect to, such release or announcement in advance of such issuance.

(b) The Parties shall mutually agree upon and, as promptly as practicable after the Closing (but in any event within twenty-four (24) hours thereafter), issue a press release announcing the consummation of the Transactions (the "***Closing Press Release***"). Promptly after the issuance of the Closing Press Release and within four (4) Business Days of execution of this Agreement, Buyer shall file a current report on Form 8-K (the "***Closing Filing***") with the Closing Press Release and a description of the Closing as required by Federal Securities Laws which Buyer shall review, comment upon and approve (which approval shall not be unreasonably withheld, conditioned or delayed) prior to filing. In connection with the preparation of the Closing Filing, the Closing Press Release, or any other report, statement, filing notice or application made by or on behalf of a Party to any Governmental Authority or other third party in connection with the transactions contemplated hereby, each Party shall, upon request by any other Party, furnish the Parties with all information concerning themselves, their respective directors, officers and equity holders, and such other matters as may be reasonably necessary or advisable in connection with the transactions contemplated hereby, or any other report, statement, filing, notice or application made by or on behalf of a Party to any third party and/ or any Governmental Authority in connection with the transactions contemplated hereby.

6.11 Confidential Information.

(a) The Company and the Sellers agree that they shall, and shall cause their respective Representatives to: (i) treat and hold in strict confidence any Buyer Confidential Information, and will not use for any purpose (except in connection with the consummation of the Transactions or the Ancillary Documents, performing their obligations hereunder or thereunder or enforcing their rights hereunder or thereunder), nor directly or indirectly disclose, distribute, publish, disseminate or otherwise make available to any third party any of the Buyer Confidential Information without Buyer's prior written consent; and (ii) in the event that the Company, any Seller or any of their respective Representatives becomes legally compelled to disclose any Buyer Confidential Information, (A) provide Buyer to the extent legally permitted with prompt written notice of such requirement so that Buyer or an Affiliate thereof may seek, at Buyer's cost, a protective Order or other remedy or waive compliance with this Section 6.11(a), and (B) in the event that such protective Order or other remedy is not obtained, or Buyer waives compliance with this Section 6.11(a), furnish only that portion of such Buyer Confidential Information which is legally required to be provided as advised by outside counsel and to exercise its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded such Buyer Confidential Information. In the event that this Agreement is terminated and the transactions contemplated hereby are not consummated, the Company, Buyer and the Sellers shall, and shall cause their respective Representatives to, promptly deliver to Buyer or destroy (at Buyer's election) any and all copies (in whatever form or medium) of Buyer Confidential Information and destroy all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon.

(b) Buyer hereby agrees it shall, and shall cause its Representatives to: (i) treat and hold in strict confidence any Company Confidential Information, and will not use for any purpose (except in connection with the consummation of the Transactions or the Ancillary Documents, performing its obligations hereunder or thereunder or enforcing its rights hereunder or thereunder), nor directly or indirectly disclose, distribute, publish, disseminate or otherwise make available to any third party any of the Company Confidential Information without the Company's prior written consent; and (ii) in the event that Buyer or any of its Representatives becomes legally compelled to disclose any Company Confidential Information, (A) provide the Company to the extent legally permitted with prompt written notice of such requirement so that the Company may seek, at the Company's sole expense, a protective Order or other remedy or waive compliance with this Section 6.11(b) and (B) in the event that such protective Order or other remedy is not obtained, or the Company waives compliance with this Section 6.11(b), furnish only that portion of such the Company Confidential Information which is legally required to be provided as advised by outside counsel and to exercise its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded such the Company Confidential Information. In the event that this Agreement is terminated and the transactions contemplated hereby are not consummated, Buyer shall, and shall cause its Representatives to, promptly deliver to the Company or destroy (at the Company's election) any and all copies (in whatever form or medium) of the Company Confidential Information and destroy all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon. Notwithstanding the foregoing, Buyer and its Representatives shall be permitted to disclose any and all the Company Confidential Information to the extent required by the Federal Securities Laws.

6.12 Post-Approval Board of Directors . The Parties shall take all necessary action, including causing the directors of Buyer to resign, so that following the Stockholder Approval, Buyer's board of directors (the "***Post-Stockholder Approval Buyer Board***") will consist of five (5) individuals. Immediately after the Stockholder Approval, the Parties shall take all necessary action to designate and appoint to the Post-Stockholder Approval Buyer Board (i) two (2) individuals that are designated by Buyer prior to the Closing who will be reasonably acceptable to the Company (the "***Buyer Director***"); and (ii) three (3) individuals that are designated by the Company prior to the Closing who will be reasonably acceptable to Buyer (the "***Company Directors***").

6.13 Indemnification of Directors and Officers; Tail Insurance.

(a) The Parties agree that all rights to exculpation, indemnification and advancement of expenses existing in favor of the current or former directors and officers of Buyer and each Person who served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee Benefit Plan or enterprise at the request of Buyer (the "***D&O Indemnified Persons***") as provided in Buyer's Organizational Documents or under any indemnification, employment or other similar agreements between any D&O Indemnified Person and Buyer, in each case as in effect on the date of this Agreement, shall survive the date upon which the Buyer obtains Stockholder Approval and continue in full force and effect in accordance with their respective terms to the extent permitted by applicable Law. For a period of six (6) years after the date upon which the Buyer obtains Stockholder Approval, Buyer shall cause the Organizational Documents of Buyer to contain provisions no less favorable with respect to exculpation and indemnification of and advancement of expenses to D&O Indemnified Persons than are set forth as of the date of this Agreement in the Organizational Documents of Buyer to the extent permitted by applicable Law. The provisions of this Section 6.13 shall survive the Closing and are intended to be for the benefit of, and shall be enforceable by, each of the D&O Indemnified Persons and their respective heirs and Representatives.

(b) For the benefit of Buyer's directors and officers, Buyer shall be permitted prior to the date upon which the Buyer obtains Stockholder Approval to obtain and fully pay the premium for a "tail" insurance policy that provides coverage for up to a six-year period from and after the Stockholder Approval for events occurring prior to the date upon which the Buyer obtains Stockholder Approval (the "***D&O Tail Insurance***") that is substantially equivalent to and in any event not less favorable in the aggregate than Buyer's existing policy or, if substantially equivalent insurance coverage is unavailable, the best available coverage. If obtained, Buyer shall maintain the D&O Tail Insurance in full force and effect, and continue to honor the obligations thereunder, and Buyer shall timely pay or cause to be paid all premiums with respect to the D&O Tail Insurance.

6.14 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, indirect and other substantially similar Taxes (including any indirect capital gains Taxes) and fees incurred in connection with this Agreement (collectively, "***Transfer Taxes***") shall be borne by the party responsible for such Transfer Taxes. The party responsible for such Transfer Taxes shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and the Sellers agree to cause the Company to cooperate in the filing of such Tax Returns and other documentation, including promptly supplying any information in its possession that is reasonably necessary to complete such Tax Returns and other documentation.

6.15 Tax Matters. Each of the Parties (together with each of its respective Affiliates) shall use its reasonable best efforts to cause, taken together, the Share Exchange to qualify as an exchange described in Section 351 of the Code, and shall not take any action or fail to take any action that could reasonably be expected to impede or prevent, taken together, the Share Exchange from qualifying as an exchange described in Section 351 of the Code.

6.16 Section 16 Matters. Subject to the following sentence, prior to the Closing, Buyer and the Company will take all such steps as may be required (to the extent permitted under applicable Laws and no-action letters issued by the SEC) to cause any acquisition of shares of Buyer Common Stock (including derivative securities with respect to shares of Buyer Common Stock) by each Person (including any director by deputization) who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Buyer, to be exempt under Rule 16b-3 under the Exchange Act.

6.17 Delivery of Audited Company Financial Statements.

(a) As soon as reasonably practicable following the date of this Agreement (and in any event no later than February 5, 2024), Sellers shall use commercially reasonably best efforts to cause the Company to complete an audit of the financial statements of the Target Companies as of December 31, 2022, and December 31, 2021, and for the fiscal years then ended which (i) shall be prepared in accordance with GAAP, applied on a consistent basis throughout the periods indicated (except, in the case of any audited financial statements, as may be specifically indicated in the notes thereto and subject, in the case of any unaudited financial statements, to normal year-end audit adjustments (none of which is expected to be, individually or in the aggregate, material) and the absence of notes thereto), (ii) shall fairly present, in all material respects, the financial position, results of operations, stockholders' deficit and cash flows of Target Companies, as applicable, as at the date thereof and for the period indicated therein (subject to, in the case of any unaudited financial statements, normal year-end audit adjustments (none of which is expected to be, individually or in the aggregate, material)), (iii) in the case of any audited financial statements, shall be (A) certified as audited in accordance with GAAP and the standards of the PCAOB by a PCAOB qualified auditor upon the filing of the initial Registration Statement, (B) shall contain an unqualified report of the Target Companies' auditors and (C) shall be substantially identical in all material respects to the unaudited financial statements from the same period that have been provided to the Buyer and (iv) shall comply in all material respects with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act in effect as of the respective dates of delivery (including Regulation S-X or Regulation S-K, as applicable). In addition, each Seller shall reasonably cooperate with Buyer and the Company to cause the Company to use its best efforts to deliver to Buyer any financial statements or similar reports of the Target Companies, required to be included in the Registration Statement or any other filings to be made with the SEC in connection with the transactions contemplated by this Agreement or any other Transaction Document.

(b) The Sellers shall reasonably cooperate with Buyer to cause the Target Companies (i) to assist, upon advance written notice, during normal business hours and in a manner such as to not unreasonably interfere with the normal operation of the Target Companies in causing to be prepared in a timely manner any other financial information or statements (including customary pro forma financial statements) that are required to be included in the Registration Statement and any other filings to be made by Buyer with the SEC in connection with the Transactions and (ii) to obtain the consents of the Target Companies' auditors, if applicable, with respect thereto as may be required by applicable Law or requested by the SEC.

6.18 Exchange of Company Stock Options. At the time of the Conversion, each outstanding Company Stock Option that is outstanding under any Company Equity Plan, whether vested unvested, shall be assumed by the Buyer and converted into the right to receive (a) an option to acquire shares of Buyer Common Stock (each, an "***Assumed Option***") or (b) such other derivative security as Buyer and the Company my agree, subject in either case to substantially the same terms and conditions as were applicable to such Company Stock Option immediately before the Closing (including, without limitation, the vesting and acceleration provisions therein), except any references therein to the Company or Company Common Shares will instead mean the Buyer and Buyer Common Stock, respectively. Each Assumed Option shall: (i) represent the right to acquire a number of shares of Buyer Common Stock (as rounded up to the nearest whole number) equal to the product of (A) the number of Company Common Shares that were subject to the corresponding Company Option immediately prior to the Closing, multiplied by (B) the Exchange Ratio; and (ii) have an exercise price (as rounded down to the nearest whole cent) equal to the quotient of (A) the exercise price of the corresponding Company Option, divided by (B) the Exchange Ratio.

6.19 CFIUS.

(a) Pursuant to this Section 6.19 and in accordance with the DPA, at the election of Buyer, and unless Buyer notifies the Company otherwise, or upon the request of CFIUS, the Sellers, the Company, and the Buyer shall submit or cause to be submitted to CFIUS a joint declaration or notice ("***CFIUS Filing***") with respect to the Transactions as promptly as practicable, but in no event later than sixty (60) Days after the date of this Agreement. The Sellers, Company, and/or the Buyer shall prepare and submit a draft CFIUS Filing, and then work diligently to promptly finalize and file a final CFIUS Filing addressing any comments or questions received from CFIUS on the draft CFIUS Filing. The Parties shall, and shall cause their respective Affiliates, to assist with and provide any information and documents need for the preparation of the CFIUS filing and to provide CFIUS with any additional or supplemental information requested by CFIUS during its assessment, (and, if applicable) review, (and, if applicable, investigation) process within three (3) Business Days (in the case of a CFIUS Notice) and within two (2) Business Days (in the case of a CFIUS Declaration) or by the deadline stated in the inquiry from CFIUS, unless an extension is granted in writing by CFIUS. In the case of filing of a CFIUS Notice with respect to the Transactions, the filing fee paid to CFIUS shall be at Buyer's expense.

(b) The Parties shall, and shall cause their respective Affiliates to cooperate in good faith to: (i) promptly inform each other Party, or its counsel, upon receipt of any substantive communication received by such Party from, or given by such Party to CFIUS regarding any such filing, submission, proceeding or the Transactions; (ii) permit each other Party or its counsel to review and discuss reasonably in advance, and consider in good faith the views of each other Party or its counsel in connection with, any proposed substantive communication to be given by it to CFIUS, (iii) give each other Party or its counsel reasonable advance notice of any in-person meeting, and any conference call that is initiated by such Party or scheduled in advance with CFIUS or such private party, and not participate independently therein without first giving each other Party or its counsel reasonable opportunity to attend and participate therein or, in the event such other Party or its counsel does not attend or participate therein, consulting with such other Party or its counsel reasonably in advance and considering in good faith the views of such other Party or its counsel in connection therewith.

(c) The Parties, in cooperation with each other, shall use reasonable best efforts to take all such actions within their respective powers to obtain the CFIUS Approval, and, without limiting the foregoing, the Parties shall, after reasonable negotiation efforts, agree to such requirements or conditions to mitigate any national security concerns as may be requested or required by CFIUS in connection with, or as a condition of, the CFIUS Approval, including entering into a mitigation agreement, letter of assurance, or national security agreement, but provided: (1) the Parties shall have no obligation to (A) propose, negotiate, commit to or effect, by consent decree, hold separate order, agreement or otherwise, the sale, transfer, license, divestiture or other disposition of, any of the businesses, product lines or assets of Buyer or any of its Affiliates or of the Sellers, (B) terminate existing, or create new, relationships, contractual rights or obligations of Buyer or its Affiliates, (C) effect any other change or restructuring of Buyer or its Affiliates, or (D) otherwise take or commit to take any actions reasonably expected to have a material adverse effect on the operation of the business of the Sellers or that interfere with Buyer's ability to control the Company or Buyer's ability to direct the management and policies of the business of the Company in any material respect; and (2) the Company and the Sellers shall not take or agree to take any of the foregoing actions without the prior written consent of Buyer.

ARTICLE VII
SURVIVAL

7.1 Survival.

(a) Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in Articles III and IV herein shall survive the Closing and shall remain in full force and effect until the Conversion and the representations and warranties contained in Article V herein shall survive the Closing and remain in full force and effect until the first anniversary of the Closing. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

(b) The covenants contained in this Agreement shall survive the Closing and remain in full force and effect until the Conversion.

7.2 Conversion Adjustment

(a) Buyer Claims. Until the earlier of (i) Stockholder Approval or (ii) June 30, 2024 (the "***Claim Deadline***"), Buyer may assert Claims against the Company and Sellers for any and all loss, liability, damage, claim, penalty, fine, forfeiture, action, fee, costs and expense (collectively, "***Losses***") incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to or by reason of: (i) any inaccuracy in or breach of any of the representations or warranties made by the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement.

(b) Sellers' Claims. Until the Claim Deadline, the Sellers' Representative, acting on behalf of the Sellers, may assert Claims against Buyer for any Loss incurred or sustained by, or imposed upon, the Sellers based upon, arising out of, with respect to or by reason of: (i) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement.

(c) Adjustment. Subject to the limitations set forth herein, the number of shares of Common Stock issued upon Conversion shall be increased or decreased by a number determined by dividing the Net Adjustment (as defined herein) by the ten-day VWAP of the Buyer Common Stock for the ten (10)-day period preceding the third day prior to the Closing Date and rounding down to the nearest whole share; provided, however, that (i) there shall be no adjustment to the number of shares of Common Stock issued upon Conversion if the Net Adjustment is less than $1,000,000 and (ii) the number of shares of Common Stock issued upon Conversion shall not be increased or decreased by more than 10% of the number of shares of Common Stock that would be issuable absent such adjustment.

(d) Procedure. Buyer and the Sellers' Representative may assert Claims pursuant to paragraphs (a) or (b), respectively, of this Section 7.2 by delivering written notice to the other Parties on or prior to the Claim Deadline setting forth in reasonable detail the basis for the Claim or Claims and a good faith estimate of the Loss arising from each Claim. Within two (2) Business Days of the Claim Deadline, the Buyer and the Sellers' Representative shall meet and use reasonable good faith efforts to resolve any disagreements as to any Claims made in a manner pursuant to this Section 7.2. If they do not obtain a final resolution within five (5) Business Days of the Claim Deadline, Buyer and the Sellers' Representative shall jointly retain Mazars USA, LLP or one of its Affiliates, or another mutually acceptable dispute resolution firm (the "***Firm***"), to resolve any remaining disagreements. Buyer and the Sellers' Representative shall direct the Firm to render a determination as soon as possible, and the Firm shall use commercially reasonable efforts to render a determination within thirty (30) days after its retention and Buyer, the Sellers' Representative and their respective agents shall cooperate with the Firm during its engagement. The Firm may consider only those items and amounts in the notice of a Claim which Buyer and the Sellers' Representative are unable to resolve. In resolving any disputed item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Firm's determination shall be based solely on written submissions or oral presentations by Buyer and the Sellers' Representative or their respective agents that are in accordance with the terms and procedures set forth in this Agreement (i.e., not on independent review) and on the definitions included herein. Without the prior consent of the Sellers' Representative (in the case of Buyer) or Buyer (in the case of the Sellers' Representative), no Party (or their respective Representatives) may have any ex parte conversations or meetings with the Firm, and there may not be any hearings or oral examinations, testimony, depositions, discovery or other similar proceedings. Each of Buyer and the Sellers' Representative shall execute a reasonable and customary engagement letter consistent with the terms of this Agreement, if such letter is required by the Firm. Absent manifest error or fraud, the determination of the Firm shall be final, conclusive and binding upon Buyer and the Sellers' Representative and enforceable as an arbitration award in any court of competent jurisdiction under the terms of the Federal Arbitration Act or its state Law equivalents. The costs and expenses of the Firm shall be borne equally by Buyer, on the one hand, and the Sellers' Representative, on the other hand; *provided, that*, the Firm shall have the power, in its sole discretion, to allocate costs and expenses between the Sellers' Representative, on the one hand, and Buyer, on the other hand, based upon the portion of the contested amount not awarded to each party bears to the contested amount actually claimed by such party. As used herein, "***Net Adjustment***" means the absolute value of the difference between the aggregate adjustment in favor of each party with respect to Losses that is agreed by Buyer and the Sellers' Representative or determined by the Firm.

(e) Solely for purposes of calculating the amount of any Losses arising out of or caused by any breach of any representation or warranty in this Agreement, any references in any such representation or warranty to "material," or "Material Adverse Effect" or similar qualifications shall be disregarded.

7.3 Sellers' Indemnification

(a) Indemnification by Each Seller. Each Seller, severally and not jointly, shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "***Buyer Indemnitees***") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of: (i) any inaccuracy in or breach of any of the representations or warranties of such Seller contained in this Agreement or in any certificate or instrument delivered by or on behalf of such Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); (ii) breach or non-fulfillment of any covenant, agreement or obligation to be performed by such Seller pursuant to this Agreement.

(b) Limitations. Notwithstanding anything to the contrary contained herein, the Parties expressly acknowledge and agree that any payment due from any Seller in respect of an indemnification claim by any Buyer Indemnitee hereunder shall solely be satisfied by recourse to the Exchange Shares and the shares of Buyer Common Stock issuable upon the Conversion, with each share of Buyer Common Stock valued at the same price per share of Buyer Common Stock used to determine Exchange Ratio.

(c) Indemnification Procedures**.**

(i) Direct Claims. Any Action by a Buyer Indemnitee on account of a Loss (a "***Direct Claim***") subject to indemnification pursuant to this Section 7.3 shall be asserted by such Buyer Indemnitee giving the Seller reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Buyer Indemnitee becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Seller of its indemnification obligations, except and only to the extent that the Seller forfeits rights or defenses by reason of such failure. Such notice by the Buyer Indemnitee shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Buyer Indemnitee. The Seller shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Buyer Indemnitee shall allow the Seller and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Buyer Indemnitee shall assist the Seller's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Seller or any of its professional advisors may reasonably request. If the Seller does not so respond within such thirty (30)-day period, the Seller shall be deemed to have rejected such claim, in which case the Buyer Indemnitee shall be free to pursue such remedies as may be available to the Buyer Indemnitee on the terms and subject to the provisions of this Agreement.

(ii) Third Party Claims.

(A) If any Buyer Indemnitee receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "***Third Party Claim***") against such Buyer Indemnitee with respect to which the Seller is obligated to provide indemnification under this Section 7.3, the Buyer Indemnitee shall give the Seller reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Seller of its indemnification obligations, except and only to the extent that the Seller forfeits rights or defenses by reason of such failure. Such notice by the Buyer Indemnitee shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Buyer Indemnitee. The Seller shall have the right to participate in, or by giving written notice to the Buyer Indemnitee, to assume the defense of any Third Party Claim at the Seller's expense and by the Seller's own counsel, and the Buyer Indemnitee shall cooperate in good faith in such defense; provided, that Seller shall not have the right to assume the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Seller assumes the defense of any Third Party Claim, subject to this Section 7.3(c), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Buyer Indemnitee. The Buyer Indemnitee shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Seller's right to assume the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Buyer Indemnitee, provided, that if in the reasonable opinion of counsel to the Buyer Indemnitee, a Buyer Indemnitee is a named defendant and (A) there are legal defenses available to such Buyer Indemnitee that are different from or additional to those available to the Seller; or (B) there exists a conflict of interest between the Seller and the Buyer Indemnitee that cannot be waived. If the Seller elects not to defend such Third Party Claim, or fails to diligently prosecute the defense of such Third Party Claim, the Buyer Indemnitee may pay, compromise, and/or defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.8) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non- defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(B) Notwithstanding any other provision of this Agreement, the Seller shall not enter into settlement of any Third Party Claim without the prior written consent of the Buyer Indemnitee, except as provided in this Section 7.3. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Buyer Indemnitee and provides, in customary form, for the unconditional release of each Buyer Indemnitee from all liabilities and obligations in connection with such Third Party Claim and the Seller desires to accept and agree to such offer, the Seller shall give written notice to that effect to the Buyer Indemnitee. If the Buyer Indemnitee fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Buyer Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Seller as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Buyer Indemnitee fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Seller may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Buyer Indemnitee has assumed the defense pursuant to Section Seller (which consent shall not be unreasonably withheld, conditioned or delayed).

7.4 Exclusive Remedies**.** Subject to Section 9.6, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the provisions set forth in this Article VII. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the provisions set forth in this Article VII. Nothing in this Section 7.4 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's fraudulent, criminal or intentional misconduct.

7.5 Share Escrow. In the event that at the time of the Conversion a Claim that has been timely asserted by Buyer or its Affiliates remains unresolved pursuant to the provisions of this Article VII, subject to the limitations and other provisions of this Agreement, Buyer shall issue all shares of Buyer Common Stock valued in excess of the aggregate amount of all unresolved Claims by Buyer or its Affiliates and shall deposit the remaining shares in the amount of the unresolved Claim into an escrow account with a third party escrow agent to be agreed to between Buyer and the Seller Representative. In the event that at the time of the Conversion a Claim that has been timely asserted by the Sellers' Representative remains unresolved pursuant to the provisions of this Article VII, Buyer shall also deposit additional shares of Buyer Common Stock in the amount of the unresolved Claim into an escrow account with a third party escrow agent to be agreed to between Buyer and the Seller Representative.

ARTICLE VIII
WAIVERS AND RELEASES

8.1 Release and Covenant Not to Sue. Effective as of the Closing, to the fullest extent permitted by applicable Law, each Seller, on behalf of itself and its Affiliates that owns any share or other equity interest in or of such Seller (the "***Releasing Persons***"), hereby releases and discharges the Target Companies and the Buyer from and against any and all Actions, obligations, agreements, debts and Liabilities whatsoever, whether known or unknown, both at law and in equity, which such Releasing Person now has, has ever had or may hereafter have against the Target Companies arising on or prior to the Closing Date or on account of or arising out of any matter occurring on or prior to the Closing Date, including any rights to indemnification or reimbursement from a Target Company, whether pursuant to its Organizational Documents, Contract or otherwise, and whether or not relating to Claims pending on, or asserted after, the Closing Date. From and after the Closing, each Releasing Person hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Action, or commencing or causing to be commenced, any Action of any kind against the Target Companies or their respective Affiliates, based upon any matter purported to be released hereby. Notwithstanding anything herein to the contrary, the releases and restrictions set forth herein shall not apply to any Claims a Releasing Person may have against any party pursuant to the terms and conditions of this Agreement or any Ancillary Document or any of the other matters set forth on Schedule 8.1.

ARTICLE IX
MISCELLANEOUS

9.1 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (i) in person, (ii) if sent by email on a Business Day before 11:59 p.m. (recipient's time), when transmitted; (iii) if sent by email on a day other than a Business Day, or if sent by email after 11:59 p.m. (recipient's time), on the Business Day following the date when transmitted; (iv) one Business Day after being sent, if sent by reputable, nationally recognized overnight courier service or (v) three (3) Business Days after being mailed, if sent by registered or certified mail, pre-paid and return receipt requested, in each case to the applicable Party at the following addresses (or at such other address for a Party as shall be specified by like notice):

If to Buyer prior to or after the Closing, to:	*with a copy (which will not constitute notice) to:*
Blue Water Biotech, Inc. 201 East Fifth Street, Suite 1900 Cincinnati, Ohio 45202 Attn: Dr. Neil Campbell, CEO Telephone No.: (301) 792-4345 E-mail: ncampbell@bwbioinc.com	Ellenoff Grossman & Schole LLP 1251 Avenue of the Americas New York, New York 10020 Attn: Barry I. Grossman, Esq. David Landau, Esq. Telephone No.: (212) 370-1300 E-mail: bigrossman@egsllp.com and dlandau@egsllp.com

If to the Company prior to the Conversion, to:	*with a copy (which will not constitute notice) to:*
Proteomedix AG Wagistrasse 23 8952 Schlieren Switzerland Attn: Ralph Schiess, CEO Telephone No.: +41 44 733 40 90 E-mail: schiess@proteomedix.com	Nelson Mullins Riley & Scarborough LLP One Financial Center Boston, MA 02111 Attn: Benjamin M. Hron Telephone No.: (617) 217-4607 E-mail: ben.hron@nelsonmullins.com
If to any Seller, to:	*with a copy (which will not constitute notice) to:*
the address of such Seller as set forth underneath such Seller's signature on the signature page hereto	VISCHER AG Aeschenvorstadt 4 P.O. Box, CH-4010 Basel Attn: Dr. Matthias Staehelin Telephone No.: +41 58 211 33 53 E-mail: mstaehelin@vischer.com
If to the Sellers' Representative:	*with a copy (which will not constitute notice) to:*
Thomas Meier c/o Viopas Venture Consulting GmbH Thiersteinerallee 17; CH-4053 Basel, Switzerland Telephone: +41 78 756 34 05 Email: thomas@viopasventure.ch	VISCHER AG Aeschenvorstadt 4 P.O. Box, CH-4010 Basel Attn: Dr. Matthias Staehelin Telephone No.: +41 58 211 33 53 E-mail: mstaehelin@vischer.com
If to the Company after the Conversion, to:	*with a copy (which will not constitute notice) to:*
Blue Water Biotech, Inc. 201 East Fifth Street, Suite 1900 Cincinnati, Ohio 45202 Attn: Dr. Neil Campbell, CEO Telephone No.: (301) 792-4345 E-mail: ncampbell@bwbioinc.com	VISCHER AG Aeschenvorstadt 4 P.O. Box, CH-4010 Basel Attn: Dr. Matthias Staehelin Telephone No.: +41 58 211 33 53 E-mail: mstaehelin@vischer.com

9.2 Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement shall not be assigned by operation of Law or otherwise without the prior written consent of Buyer and the Company (and after the Closing, the Sellers' Representative), and any assignment without such consent shall be null and void; provided that no such assignment shall relieve the assigning Party of its obligations hereunder.

9.3 Third Parties. Except for the rights of the D&O Indemnified Persons set forth in Section 6.13, which the Parties acknowledge and agree are express third party beneficiaries of this Agreement, nothing contained in this Agreement or in any instrument or document executed by any party in connection with the transactions contemplated hereby shall create any rights in, or be deemed to have been executed for the benefit of, any Person that is not a Party hereto or thereto or a successor or permitted assign of such a Party.

9.4 Governing Law; Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of Delaware without regard to the conflict of laws principles thereof except for the transfer of the Purchased Shares. including ownership, any related rights and the items to be delivered in connection therewith under Section 2.2(f) to (i), which shall be governed by and construed in accordance with the substantive law of Switzerland, excluding the principles of international private law. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court located in Delaware (or in any appellate court thereof) (the "***Specified Courts***"). Each Party hereto hereby (a) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Action arising out of or relating to this Agreement brought by any Party hereto and (b) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any Specified Court. Each Party agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each Party irrevocably consents to the service of the summons and complaint and any other process in any other Action relating to the Transactions, on behalf of itself, or its property, by personal delivery of copies of such process to such Party at the applicable address set forth in Section 9.1. Nothing in this Section 9.4 shall affect the right of any Party to serve legal process in any other manner permitted by Law.

9.5 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.5.

9.6 Specific Performance. Each Party acknowledges that the rights of each Party to consummate the transactions contemplated hereby are unique, recognizes and affirms that in the event of a breach of this Agreement by any Party, money damages may be inadequate and the non-breaching Parties may have not adequate remedy at law, and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by an applicable Party in accordance with their specific terms or were otherwise breached. Accordingly, each Party shall be entitled to seek an injunction or restraining order to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions hereof, without the requirement to post any bond or other security or to prove that money damages would be inadequate, this being in addition to any other right or remedy to which such Party may be entitled under this Agreement, at law or in equity.

9.7 Severability. In case any provision in this Agreement shall be held invalid, illegal or unenforceable in a jurisdiction, such provision shall be modified or deleted, as to the jurisdiction involved, only to the extent necessary to render the same valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby nor shall the validity, legality or enforceability of such provision be affected thereby in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out, so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision.

9.8 Amendment. This Agreement may be amended, supplemented or modified only by execution of a written instrument signed by Buyer, the Company and the Sellers' Representative; provided that no amendment, supplementation or modification shall affect a Seller in a manner materially and adversely disproportionate to the other Sellers without the prior written consent of such Seller, provided, that, after approval of the Transactions by Buyer stockholders, as applicable, no amendment may be made which by Law requires further approval by such stockholders without such further approval.

9.9 Waiver. Each of Buyer and the Company on behalf of itself and its Affiliates, and each Seller on its behalf, may in its sole discretion (i) extend the time for the performance of any obligation or other act of any other non-Affiliated Party hereto, (ii) waive any inaccuracy in the representations and warranties by such other non-Affiliated Party contained herein or in any document delivered pursuant hereto and (iii) waive compliance by such other non-Affiliated Party with any covenant or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party or Parties to be bound thereby (including the Sellers' Representative in lieu of such Party to the extent provided in this Agreement). Notwithstanding the foregoing, no failure or delay by a Party in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder. Notwithstanding the foregoing, any waiver of any provision of this Agreement after the Closing shall also require the prior written consent of the Sellers' Representative.

9.10 Entire Agreement. This Agreement and the documents or instruments referred to herein, including any exhibits, annexes and schedules attached hereto, which exhibits, annexes and schedules are incorporated herein by reference, together with the Ancillary Documents, embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or the documents or instruments referred to herein, which collectively supersede all prior agreements and the understandings among the Parties with respect to the subject matter contained herein.

9.11 Interpretation. The table of contents and the Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. In this Agreement, unless the context otherwise requires: (a) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and words in the singular, including any defined terms, include the plural and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) any accounting term used and not otherwise defined in this Agreement or any Ancillary Document has the meaning assigned to such term in accordance with GAAP, as applicable, based on the accounting principles used by the applicable Person; (d) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; (e) the words "herein," "hereto," and "hereby" and other words of similar import in this Agreement shall be deemed in each case to refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement; (f) the word "if" and other words of similar import when used herein shall be deemed in each case to be followed by the phrase "and only if"; (g) the term "or" means "and/or"; (h) any reference to the term "ordinary course" or "ordinary course of business" shall be deemed in each case to be followed by the words "consistent with past practice"; (i) any agreement, instrument, insurance policy, Law or Order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, insurance policy, Law or Order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein; (j) except as otherwise indicated, all references in this Agreement to the words "Section," "Article", "Schedule", "Annex" and "Exhibit" are intended to refer to Sections, Articles, Schedules, Annexes and Exhibits to this Agreement; and (k) the term "Dollars" or "$" means United States dollars. Any reference in this Agreement to a Person's directors shall include any member of such Person's governing body and any reference in this Agreement to a Person's officers shall include any Person filling a substantially similar position for such Person. Any reference in this Agreement or any Ancillary Document to a Person's shareholders or stockholders shall include any applicable owners of the equity interests of such Person, in whatever form. The Parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. To the extent that any Contract, document, certificate or instrument is represented and warranted to by the Company to be given, delivered, provided or made available by the Company, in order for such Contract, document, certificate or instrument to have been deemed to have been given, delivered, provided and made available to Buyer or its Representatives, such Contract, document, certificate or instrument shall have been posted to the electronic data site maintained on behalf of the Company for the benefit of Buyer and its Representatives at least two (2) Business Days prior to the date of this Agreement and Buyer and its Representatives have been given access to the electronic folders containing such information. To the extent that any Contract, document, certificate or instrument is represented and warranted to by Buyer to be given, delivered, provided or made available by Buyer, in order for such Contract, document, certificate or instrument to have been deemed to have been given, delivered, provided and made available to the Company or its Representatives, such Contract, document, certificate or instrument shall have been (i) filed publicly or (ii) posted to the electronic data site maintained on behalf of Buyer for the benefit of the Company and its Representatives at least two (2) Business Days prior to the date of this Agreement and the Company and its Representatives have been given access to the electronic folders containing such information.

9.12 Counterparts. This Agreement may be executed and delivered (including by facsimile or other electronic transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

9.13 Sellers' Representative.

(a) Each Seller, on behalf of itself and its successors and assigns, appoints Thomas Meier as its agent, proxy, attorney-in-fact and representative under this Agreement (in such capacity, the "***Sellers' Representative***") and authorizes and directs the Sellers' Representative to take any and all actions in the name and on behalf of such Seller as may be necessary or appropriate to exercise or perform the rights, powers and obligations of such Seller under this Agreement or any other Ancillary Document and to consummate the transactions contemplated hereby or thereby, with full power of substitution to act in the name, place and stead of such Seller, including exercising such rights, power and authority, as are authorized, delegated and granted to the Sellers' Representative on behalf of Sellers pursuant to this Agreement (including the right to receive notices and other documentation pursuant to the terms of this Agreement on behalf of Sellers). By its execution hereof, each Seller hereby authorizes, delegates and grants to the Sellers' Representative authority to take all actions that this Agreement and any Ancillary Document provide are to be taken by such Seller. All decisions and actions by the Sellers' Representative, including any agreement between the Sellers' Representative and Buyer relating to the defense or settlement of any Claims for which a Seller may be required to indemnify under this Agreement shall be binding upon all of the Sellers, and no Seller shall have the right to object, dissent, protest or otherwise contest the same, and Buyer is entitled to rely upon the same in all respects and shall have no liability to any individual Seller for any action taken by the Seller's Representative on behalf of the Sellers in accordance with this Section. The provisions of this Section are irrevocable and coupled with an interest.

(i) Each Seller agrees that the Sellers' Representative (i) shall not be liable for any actions taken or omitted to be taken under or in connection with this Agreement or any Ancillary Document or the transactions contemplated hereby or thereby and (ii) shall not owe any fiduciary duty or have any fiduciary responsibility to any Seller or the Company as a result of its actions taken as the Sellers' Representative pursuant to this Agreement or any Ancillary Document.

(ii) Each Seller shall, up to the amount of its Sellers Percentage, indemnify the Sellers' Representative and hold it harmless against any Losses incurred on the part of the Sellers' Representative and arising out of or in connection with the acceptance or administration of the Sellers' Representative's duties under this Agreement, including the reasonable fees and expenses of any legal counsel retained by the Sellers' Representative. In no event shall the Sellers' Representative in such capacity be liable hereunder or in connection herewith for any indirect, punitive, special or consequential damages. The Sellers' Representative shall be fully protected against the Sellers in relying upon any written notice, demand, certificate or document that it in good faith believes to be genuine, including facsimiles or copies thereof. In connection with the performance of its rights and obligations hereunder, the Sellers' Representative shall have the right at any time and from time to time to select and engage, at the cost and expense of the Sellers, attorneys, accountants, investment bankers, advisors, consultants and clerical personnel and obtain such other professional and expert assistance, maintain such records and incur other out-of-pocket expenses, as the Sellers' Representative may deem necessary or desirable from time to time. All of the indemnities,

immunities, releases and powers granted to the Sellers' Representative under this Section shall survive the Closing.

ARTICLE X
DEFINITIONS

10.1 Certain Definitions. For purpose of this Agreement, the following capitalized terms have the following meanings:

"***Action***" means any notice of noncompliance or violation, or any claim, demand, charge, action, suit, litigation, audit, settlement, complaint, stipulation, assessment or arbitration, or any request (including any request for information), inquiry, hearing, proceeding or investigation, by or before any Governmental Authority.

"***Affiliate***" means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

"***Aggregate Buyer Common Stock***" means the quotient obtained by dividing (a) the Exchange Consideration by (b) the ten-day VWAP of the Buyer Common Stock for the ten (10)-day period preceding the third day prior to the Closing Date.

"***Ancillary Documents***" means each agreement, instrument or document attached hereto as an Exhibit, including the Non-Competition and Non-Solicitation Agreements, the Subscription Agreements, the Series B Certificate of Designation, the Lock-Up Agreements and the other agreements, certificates and instruments to be executed or delivered by any of the Parties hereto in connection with or pursuant to this Agreement.

"***Benefit Plans***" of any Person means any and all deferred compensation, executive compensation, incentive compensation, equity purchase or other equity-based compensation plan, employment or consulting, severance or termination pay, holiday, vacation or other bonus plan or practice, hospitalization or other medical, life or other insurance, supplemental unemployment benefits, profit sharing, pension, or retirement plan, program, agreement, commitment or arrangement, and each other employee benefit plan, program, agreement or arrangement, including each "employee benefit plan" as such term is defined under Section 3(3) of ERISA or any similar law in Switzerland, maintained or contributed to or required to be contributed to by a Person for the benefit of any employee or terminated employee of such Person, or with respect to which such Person has any Liability, whether direct or indirect, actual or contingent, whether formal or informal, and whether legally binding or not.

"***Business Day***" means any day other than a Saturday, Sunday or a legal holiday on which commercial banking institutions in New York, New York are authorized to close for business; provided that banks shall not be deemed to be authorized or obligated to be closed due to a "shelter in place" or similar closure of physical branch locations at the direction of any Governmental Authority if such banks' electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

"***Buyer Common Stock***" means the shares of common stock, par value $0.00001 per share, of Buyer.

"***Buyer Company***" means each of Buyer and its direct and indirect Subsidiaries.

"***Buyer Confidential Information***" means all confidential or proprietary documents and information concerning Buyer or any of its Affiliates; provided, however, that Buyer Confidential Information shall not include any information which, (i) at the time of disclosure by the Company, any Seller or any of their respective Representatives, is generally available publicly and was not disclosed in breach of this Agreement or (ii) at the time of the disclosure by Buyer or its Representatives to by the Company, any Seller or any of their respective Representatives, was previously known by such receiving party without violation of Law or any confidentiality obligation by the Person receiving such Buyer Confidential Information.

"***Buyer Interim Balance Sheet***" means the balance sheet of Buyer included in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, filed with the SEC on October 20, 2023.

"***Buyer Preferred Stock***" means shares of Series B Preferred Stock, par value $0.00001 par value per share, of Buyer.

"***Buyer Securities***" means the Buyer Common Stock and the Buyer Preferred Stock and the Buyer Stock Options, collectively.

"***Buyer Stock Options***" means options to purchase shares of Buyer Common Stock.

"***CFIUS***" means the Committee on Foreign Investment in the United States and each member agency acting on its behalf.

"***CFIUS Approval***" means that the Parties have received a written notice from CFIUS to the effect that: (a) the Transactions are not subject to the DPA; (b) CFIUS has determined that there are no unresolved national security concerns with respect to the Transactions and has concluded all action under the DPA; (c) if CFIUS has sent a report to the President of the United States either (i) the President of the United States shall have determined not to use his powers pursuant to the DPA to suspend, condition, or prohibit the consummation of the Transactions or (ii) the period allotted for presidential action in the DPA shall have passed without any determination by the President of the United States.

"***Code***" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as amended. Reference to a specific section of the Code shall include such section and any valid treasury regulation promulgated thereunder.

"***Company Confidential Information***" means all confidential or proprietary documents and information concerning the Target Companies or the Sellers or any of their respective Affiliates, furnished in connection with this Agreement or the transactions contemplated hereby; provided, however, that the Company Confidential Information shall not include any information which, (i) at the time of disclosure by the Company or its Representatives, is generally available publicly and was not disclosed in breach of this Agreement or (ii) at the time of the disclosure by the Company, the Sellers' Representative, the Sellers or their respective Representatives to Buyer or its Representatives was previously known by such receiving party without violation of Law or any confidentiality obligation by the Person receiving such the Company Confidential Information.

"***Company Convertible Securities***" means, collectively, any options, restricted stock units, warrants or rights to subscribe for or purchase any capital shares of the Company or securities convertible into or exchangeable for, or that otherwise confer on the holder any right to acquire any capital shares of the Company.

"***Company Fully Diluted Share Amount***" means, as of immediately prior to the Closing, the sum of (a) the aggregate number of Company Outstanding Shares and (b) the aggregate number of Company Shares issuable upon the exercise of outstanding Company Stock Options calculated using the treasury method of accounting.

"***Company Outstanding Shares***" means the total number of shares of the Company Shares issued and outstanding immediately prior to the Closing after giving effect to the Company Convertible Securities Conversion.

"***Company Securities***" means, collectively, the Company Shares, any Company Stock Options and any other the Company Convertible Securities.

"***Company Shares***" means the ordinary shares, par value CHF 1.00 per share, of the Company.

"*Company Stock Options*" means options to purchase Company Shares.

"***Consent***" means any consent, approval, waiver, authorization or Permit of, or notice to or declaration or filing with any Governmental Authority or any other Person.

"***Contracts***" means all contracts, agreements, binding arrangements, bonds, notes, indentures, mortgages, debt instruments, purchase order, licenses (and all other contracts, agreements or binding arrangements concerning Intellectual Property), franchises, leases and other instruments or obligations of any kind, written or oral (including any amendments and other modifications thereto).

"***Control***" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. "Controlled", "Controlling" and "under common Control with" have correlative meanings. Without limiting the foregoing a Person (the "***Controlled Person***") shall be deemed Controlled by (a) any other Person (i) owning beneficially, as meant in Rule 13d-3 under the Exchange Act, securities entitling such Person to cast ten percent (10%) or more of the votes for election of directors or equivalent governing authority of the Controlled Person or (ii) entitled to be allocated or receive ten percent (10%) or more of the profits, losses, or distributions of the Controlled Person; (b) an officer, director, general partner, partner (other than a limited partner), manager, or member (other than a member having no management authority that is not a Person described in clause (a) above) of the Controlled Person; or (c) a spouse, parent, lineal descendant, sibling, aunt, uncle, niece, nephew, mother-in-law, father-in-law, sister-in-law, or brother-in-law of an Affiliate of the Controlled Person or a trust for the benefit of an Affiliate of the Controlled Person or of which an Affiliate of the Controlled Person is a trustee.

"Conversion Approval" means the Conversion shall have been approved by the requisite vote of the Buyer Stockholders (including any separate class or series vote that is required, whether pursuant to the Buyer's Organizational Documents, any stockholder agreement or otherwise) at a meeting of Buyer stockholders, held in accordance with the Delaware General Corporation Law, as amended, and Buyer's Organizational Documents.

"Conversion" means the conversion of all of the total issued and outstanding shares of Series B Preferred Stock into shares of Buyer Common Stock.

"***Copyrights***" means any works of authorship, mask works and all copyrights therein, including all renewals and extensions, copyright registrations and applications for registration and renewal, and non-registered copyrights.

"***COVID-19***" means SARS-CoV-2 or COVID-19, and any evolutions thereof or any other related or associated epidemics, pandemics or disease outbreaks.

"***COVID-19 Measures***" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester or any other Law, directive, guidelines or recommendations by any Governmental Authority (including the Centers for Disease Control and the World Health Organization) in each case in connection with, related to or in response to COVID-19, including the Coronavirus Aid, Relief, and Economic Security Act (CARES) or any changes thereto.

"***DPA***" means Section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. §4565, and all interim and final rules and regulations issued and effective thereunder.

"***Environmental Law***" means any Law in any way relating to (a) the protection of human health and safety, (b) the protection, preservation or restoration of the environment and natural resources (including air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (c) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, Release or disposal of Hazardous Materials.

"***Environmental Liabilities***" means, in respect of any Person, all Liabilities, obligations, responsibilities, Remedial Actions, Actions, Orders, losses, damages, costs, and expenses (including all reasonable fees, disbursements, and expenses of counsel, experts, and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, Environmental Permit, Order, or Contract with any Governmental Authority or other Person, that relates to any environmental, health or safety condition, violation of Environmental Law, or a Release or threatened Release of Hazardous Materials.

"***ERISA***" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

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

"***Exchange Ratio***" means the quotient (rounded to four decimal places) obtained by dividing (a) the Aggregate Buyer Common Stock *less* the number of Creditor Shares (on an as converted basis) by (b) the Company Fully Diluted Share Amount.

"***Foreign Plan***" means any plan, fund (including any superannuation fund) or other similar program or arrangement established or maintained outside the United States by the Company or any one or more of its Subsidiaries primarily for the benefit of employees of the Company or such Subsidiaries residing outside the United States, which plan, fund or other similar program or arrangement provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"***GAAP***" means generally accepted accounting principles as in effect in the United States of America.

"***Governmental Authority***" means any federal, state, local, foreign or other governmental, quasi-governmental or administrative body, instrumentality, department or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"***Hazardous Material***" means any waste, gas, liquid or other substance or material that is defined, listed or designated as a "hazardous substance", "pollutant", "contaminant", "hazardous waste", "regulated substance", "hazardous chemical", or "toxic chemical" (or by any similar term) under any Environmental Law, or any other material regulated, or that could result in the imposition of Liability or responsibility, under any Environmental Law, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold, and urea formaldehyde insulation.

"***Indebtedness***" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money (including the outstanding principal and accrued but unpaid interest), whether contingent or otherwise, including the principal amount thereof and all fees and interest accrued thereon, (b) all obligations for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of business), (c) any other indebtedness of such Person that is evidenced by a note, bond, debenture, credit agreement or similar instrument, minority interests, preferred shares, or other debt security, including all interest accrued thereon, (d) all obligations of such Person under leases that should be classified as capital leases in accordance with GAAP or Swiss GAAP (as applicable to such Person), (e) all obligations of such Person for the reimbursement of any obligor on any line or letter of credit, banker's acceptance, guarantee or similar credit transaction, (f) all obligations of such Person in respect of acceptances issued or created, (g) all interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by such Person, whether periodically or upon the happening of a contingency, (h) all obligations secured by an Lien on any property of such Person, (i) any premiums, prepayment fees or other penalties, fees, costs or expenses associated with payment of any Indebtedness of such Person and (j) all guarantees, pledges or similar assurances by any member of such Person to pay another Person's debt or to perform another Person's obligation in the case of default, (k) all off-balance sheet Liabilities of such Person; and (l) all obligations described in clauses (a) through (k) above of any other Person which is directly or indirectly guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss.

"***Intellectual Property***" means all of the following as they exist in any jurisdiction throughout the world: Patents, Trademarks, Copyrights, Trade Secrets, Internet Assets, Software and other intellectual property, and all licenses, sublicenses and other agreements or permissions related to the preceding property.

"***Internet Assets***" means any all domain name registrations, web sites and web addresses and related rights, items and documentation related thereto, and applications for registration therefor.

"***Investment Company Act***" means the U.S. Investment Company Act of 1940, as amended.

"***Knowledge***" means, with respect to (a) the Company, the actual knowledge of each of Christian Brühlmann or Ralph Schiess, after reasonable inquiry with his direct reports responsible for the applicable subject matter and any relevant books and records; (b) Buyer, the actual knowledge of each of Neil Campbell and Bruce Harmon, after reasonable inquiry with his direct reports responsible for the applicable subject matter and any relevant books and records; and (c) any other Party, (i) if an entity, the actual knowledge of its directors and executive officers, after reasonable inquiry of their direct reports responsible for the applicable subject matters and any relevant books and records, or (ii) if a natural person, the actual knowledge of such Party.

"***Law***" means any federal, state, local, municipal, foreign or other law, statute, legislation, principle of common law, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, directive, requirement, writ, injunction, settlement, Order or Consent that is or has been issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"***Liabilities***" means any and all liabilities, Indebtedness, Actions or obligations of any nature (whether absolute, accrued, contingent or otherwise, whether known or unknown, whether direct or indirect, whether matured or unmatured, whether due or to become due and whether or not required to be recorded or reflected on a balance sheet under GAAP, or other applicable accounting standards), including Tax liabilities due or to become due.

"***Lien***" means any mortgage, pledge, security interest, attachment, right of first refusal, option, proxy, voting trust, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof), restriction (whether on voting, sale, transfer, disposition or otherwise), any subordination arrangement in favor of another Person, or any filing or agreement to file a financing statement as debtor under the Uniform Commercial Code or any similar Law.

"***Material Adverse Effect***" means, with respect to any specified Person, any fact, event, occurrence, change or effect that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect upon (a) the business, assets, Liabilities, results of operations, prospects or condition (financial or otherwise) of such Person and its Subsidiaries, taken as a whole, or (b) the ability of such Person or any of its Subsidiaries on a timely basis to consummate the Transactions or the Ancillary Documents to which it is a party or bound or to perform its obligations hereunder or thereunder; provided, however, that for purposes hereof, any facts, events, occurrences, changes or effects directly or indirectly attributable to, resulting from, relating to or arising out of the following (by themselves or when aggregated with any other, changes or effects) shall not be deemed to be, constitute, or be taken into account when determining whether there has or may, would or could have occurred a Material Adverse Effect: (i) general changes in the financial or securities markets (including changes in the credit, debt, securities and capital markets) or general economic or political conditions in the country or region in which such Person or any of its Subsidiaries do business; (ii) changes, conditions or effects that generally affect the industries in which such Person or any of its Subsidiaries principally operate; (iii) changes in applicable Laws (including COVID-19 Measures) or GAAP or other applicable accounting principles or mandatory changes in the regulatory accounting requirements applicable to any industry in which such Person and its Subsidiaries principally operate; (iv) conditions caused by acts of God, terrorism, war (whether or not declared), natural disaster or any outbreak or continuation of an epidemic or pandemic (including, without limitation, COVID-19) or the worsening thereof, including the effects of any Governmental Authority or other third-party responses thereto; (v) any failure in and of itself by such Person and its Subsidiaries to meet any internal or published budgets, projections, forecasts or predictions of financial performance for any period (provided that the underlying cause of any such failure may be considered in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent not excluded by another exception herein); (vi) the announcement or pendency of the Transactions (including the Share Exchange) (provided that this clause (vi) shall not apply to any representation or warranty to the extent such representation or warranty relates to the consequences resulting from the execution, announcement, performance or existence of this Agreement); and (vii) in the case of the Company, the ability of the Company to make any of the representations and warranties contained in this Agreement as of the date hereof ; provided, further, however, that any event, occurrence, fact, condition, or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition, or change has a disproportionate effect on such Person or any of its Subsidiaries compared to other participants in the industries in which such Person or any of its Subsidiaries primarily conducts its businesses. Notwithstanding the foregoing, with respect to Buyer, the failure to obtain the Stockholder Approval shall not be deemed to be a Material Adverse Effect on or with respect to Buyer.

"***Nasdaq***" means the Nasdaq Capital Market.

"***Order***" means any order, decree, ruling, judgment, injunction, writ, determination, binding decision, verdict, judicial award or other action that is or has been made, entered, rendered, or otherwise put into effect by or under the authority of any Governmental Authority.

"***Organizational Documents***" means, with respect to any Person, its certificate of incorporation and bylaws, statutory books, articles of association memorandum and articles of association or similar organizational documents, in each case, as amended.

"***Patents***" means any patents, patent applications and the inventions, designs and improvements described and claimed therein, patentable inventions, and other patent rights (including any divisionals, provisionals, continuations, continuations-in-part, substitutions, or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are amended, modified, withdrawn, or refiled).

"***Permits***" means all federal, state, local or foreign or other third-party permits, grants, easements, consents, approvals, authorizations, exemptions, licenses, franchises, concessions, ratifications, permissions, clearances, confirmations, endorsements, waivers, certifications, designations, ratings, registrations, qualifications or Orders of any Governmental Authority or any other Person.

"***Permitted Financing***" means one or more debt or equity financing transactions consummated by and funded into Buyer during the time between Closing and the Conversion resulting in aggregate gross proceeds of no greater than $25 million.

"***Permitted Liens***" means (a) Liens for Taxes or assessments and similar governmental charges or levies, which either are (i) not delinquent or (ii) being contested in good faith and by appropriate proceedings, and adequate reserves (as determined in accordance with GAAP) have been established with respect thereto, (b) other Liens imposed by operation of Law arising in the ordinary course of business for amounts which are not due and payable and as would not in the aggregate materially adversely affect the value of, or materially adversely interfere with the use of, the property subject thereto, (c) Liens incurred or deposits made in the ordinary course of business in connection with social security, (d) Liens on goods in transit incurred pursuant to documentary letters of credit, in each case arising in the ordinary course of business, or (e) Liens arising under this Agreement or any Ancillary Document.

"***Person***" means an individual, corporation, exempted company, partnership (including a general partnership, limited partnership, exempted limited partnership or limited liability partnership), limited liability company, association, trust or other entity or organization, including a government, domestic or foreign, or political subdivision thereof, or an agency or instrumentality thereof.

"***Personal Property***" means any machinery, equipment, tools, vehicles, furniture, leasehold improvements, office equipment, plant, parts and other tangible personal property.

"***Private Placement Investment***" means a private equity investment in Buyer pursuant to which certain investors ("***Private Placement Investor***") agree to subscribe for and Buyer will agree to issue to each such Private Placement Investor, equity securities of Buyer pursuant to a Subscription Agreement.

"***Release***" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the indoor or outdoor environment, or into or out of any property.

"***Remedial Action***" means all actions to (i) clean up, remove, treat, or in any other way address any Hazardous Material, (ii) prevent the Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care, or (iv) correct a condition of noncompliance with Environmental Laws.

"***Representatives***" means, as to any Person, such Person's Affiliates and the respective managers, directors, officers, employees, independent contractors, consultants, advisors (including financial advisors, counsel and accountants), agents and other legal representatives of such Person or its Affiliates.

"***SEC***" means the U.S. Securities and Exchange Commission (or any successor Governmental Authority).

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

"***Sellers Percentage***" means the percentage of Purchased Shares owned by such Seller as compared to the total number of Purchased Shares owned by all Sellers as provided on Annex I.

"***Sellers' Representative***" has the meaning set forth in the preamble to this Agreement.

"***Software***" means any computer software programs, including all source code, object code, and documentation related thereto and all software modules, tools and databases.

"***SOX***" means the U.S. Sarbanes-Oxley Act of 2002, as amended.

"***Stockholder Approval***" means the approval by the requisite vote of stockholders of Buyer at the Special Stockholder Meeting of the Stockholder Approval Matters.

"***Subsidiary***" means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of capital shares entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or Controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interests thereof is at the time owned or Controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons will be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons will be allocated a majority of partnership, association or other business entity gains or losses or will be or Control the managing director, managing member, general partner or other managing Person of such partnership, association or other business entity. A Subsidiary of a Person will also include any variable interest entity which is consolidated with such Person under applicable accounting rules.

"*Swiss GAAP*" means the accounting principles as in effect pursuant to the Swiss Code of Obligations.

"***Target Company***" means each of the Company and its direct and indirect Subsidiaries.

"***Tax Return***" means any return, declaration, report, claim for refund, information return or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Taxes or the administration of any Laws or administrative requirements relating to any Taxes.

"***Taxes***" means (a) all direct or indirect federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, value-added, ad valorem, transfer, real property, Personal Property, franchise, profits, license, lease, service, service use, withholding, payroll, employment, social security and related contributions due in relation to the payment of compensation to employees, excise, severance, stamp, occupation, premium, property, windfall profits, alternative minimum, estimated, customs, duties or other Taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (b) any Liability for payment of amounts described in clause (a) whether as a result of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law, (c) liability under any abandonment or unclaimed property, escheat or similar Law and (d) any Liability for the payment of amounts described in clauses (a), (b) or (c) of this sentence as a result of any tax sharing, tax group, tax indemnity or tax allocation agreement with, or any other express or implied agreement to indemnify, any other Person.

"***Trade Secrets***" means any trade secrets, confidential business information, concepts, ideas, designs, research or development information, processes, procedures, techniques, technical information, specifications, operating and maintenance manuals, engineering drawings, methods, know-how, data, mask works, discoveries, inventions, modifications, extensions, improvements, and other proprietary rights (whether or not patentable or subject to Copyright, Trademark, or trade secret protection).

"***Trademarks***" means any trademarks, service marks, trade dress, trade names, brand names, internet domain names, designs, logos, or corporate names (including, in each case, the goodwill associated therewith), whether registered or unregistered, and all registrations and applications for registration and renewal thereof.

"***VWAP***" means, for any security as of any date(s), the dollar volume-weighted average price for such security on the principal securities exchange or securities market on which such security is then traded during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "HP" function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported by OTC Markets Group Inc. If the VWAP cannot be calculated for such security on such date(s) on any of the foregoing bases, the VWAP of such security on such date(s) shall be the fair market value as determined reasonably and in good faith by a majority of the disinterested independent directors of the board of directors (or equivalent governing body) of the applicable issuer. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

10.2 Section References. The following capitalized terms, as used in this Agreement, have the respective meanings given to them in the Section as set forth below adjacent to such terms:

Term	Section
Agreement	Preamble
Antitrust Laws	3.3
Assumed Option	6.18
Audited Company Financials	4.7(a)
Buyer	Preamble
Buyer Benefit Plan	3.19(a)
Buyer Board	Recitals
Buyer Director	6.12
Buyer Disclosure Schedules	Article III
Buyer Financials	3.7(b)
Buyer fundamental Representations	7.3(a)
Buyer Indemnitees	7.2(a)
Buyer IP	3.13(c)
Buyer IP Licenses	3.13(a)
Buyer Material Contract	3.12(a)
Buyer Owned Real Property	3.15(b)
Buyer Permits	3.10
Buyer Personal Property Leases	3.16
Buyer Real Property Leases	3.15(a)
Buyer Registered IP	3.13(a)
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[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be signed and delivered by its respective duly authorized officer as of the date first written above.

The Company:

PROTEOMEDIX AG

By: /s/ Ralph Schiess
Name: Ralph Schiess
Title: CEO

Buyer:

BLUE WATER BIOTECH, INC.

By: /s/ Dr. Neil Campbel
Name: Dr. Neil Campbell
Title: CEO

Sellers' Representative:

By: /s/ Thomas Meier
Thomas Meier, solely in the capacity as the Sellers' Representative hereunder

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The Sellers:

Name of Seller: Dr. Ralph Scheiss

By: /s/ Dr. Ralph Scheiss

The Sellers:

Name of Seller: Christian Briihlmann

By: /s/ Christian Briihlmann

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The Sellers:

Name of Seller: Thomas Cerny

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Rudolf Aenersold

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Corinne Krek

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: ETC Zurich

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Altos Venture AG

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Dr. Jurg Geigy

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: The Habs W. Schoepflin Trust

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Zurcher Kantonalbank

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: W.A. de Vidier Stiftung

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Labrador Trust

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Andre J. Mueller

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Davent Holding AG

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Scalis AG

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Dr. Werner Schafer

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Harry Welten

/s/ Harry Welten

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The Sellers:

Name of Seller: Isaac Kobrin

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: Dr. Helge Lubenow

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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The Sellers:

Name of Seller: New Horizon Health Ltd

By proxy: /s/ Dr. Ralph Schiess
Name: Dr. Ralph Schiess

By proxy: /s/ Harry Welten
Name: Harry Welten

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ANNEX I
List of Sellers

Seller Name	Number of Company Shares Held by Seller (Includes Conversion of Notes)	Number of Common Shares to be Issued at Closing	Number of Preferred Shares to be Issued at Closing	Aggregate Number of Common Shares Post-Conversion
Ralph Schiess				
Christian Brühlmann				
Thomas Cerny				
Rudolf Aebersold				
Corinne Krek				
ETH Zürich				
Altos Venture AG				
Dr. Jürg Geigy				
Schoepflin Trust				
Zürcher Kantonalbank				
W.A. de Vigier Stiftung				
Labrador Trust				
Andre J. Mueller				
Davent Holding				
Scablis AG				
Werner Schäfer				
Harry Welten				
Isaac Kobrin				
Helge Lubenow				
New Horizon Health Limited				
TOTAL				

List of Creditors

Name of Creditor	Number of Common Shares to be Issued at Closing	Number of Preferred Shares to be Issued at Closing	Aggregate Number of Common Shares Post-Conversion
Lacarya Scott			
Romy Seth			
Finalis Securities LLC			
TOTAL			

Exhibit 3.1

CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF

Blue Water Biotech, Inc.
a Delaware Corporation

The undersigned, for the purposes of amending the Amended and Restated Articles of Incorporation of Blue Water Biotech, Inc. (the "**Corporation**"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("**DGCL**"), does hereby certify that:

FIRST: In accordance with Section 141 of the DGCL, the Board of Directors of the Corporation (the "**Board**") duly adopted a resolution proposing and declaring advisable the following amendment to Article I of the Amended and Restated Articles of Incorporation of said Corporation:

The name of this corporation is Onconetix, Inc.

SECOND: The aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

THIRD: The aforesaid amendment shall be effective as of December 15, 2023.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Amended and Restated Articles of incorporation of the Corporation to be duly executed by the undersigned this 15h day of December 2023.

Blue Water Biotech, Inc.
By:
/s/ Neil Campbell
Name: Neil Campbell
Title: Chief Executive Officer

Exhibit 3.2

FOURTH AMENDED AND RESTATED BYLAWS
OF
ONCONETIX, INC.

Effective December 15, 2023

ARTICLE I
Meeting of Stockholders

Section 1.1. *Annual Meetings*. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 1.2. *Special Meetings*. Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, or by the Chief Executive Officer or President, or by a resolution adopted by a majority of the whole Board of Directors, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.3. *Notice of Meetings*. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90^{th}) day nor earlier than the close of business on the one hundred twentieth (120^{th}) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such annual meeting or the tenth (10^{th}) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

Section 1.4. *Adjournments*. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.5. *Quorum*. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of one-third of the voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by one-third of the voting power thereof, adjourn the meeting from time to time in the manner provided in Section 1.4 of these bylaws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. *Organization*. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by the Chief Executive Officer or, in his or her absence, by the President or, in his or her absence, by a Vice President or, in the absence of the foregoing persons, by a chairman designated by the Board of Directors or, in the absence of such designation, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. *Voting; Proxies*. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 1.8. *Fixing Date for Determination of Stockholders of Record*.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 1.9. *List of Stockholders Entitled to Vote*. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders.

Section 1.10. *Action by Written Consent of Stockholders*. Unless otherwise provided by the certificate of incorporation, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly held meeting of stockholders of the corporation at which a quorum is present or represented and may not be effected by any consent in writing by such stockholders.

Section 1.11. *Inspectors of Election*. The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.12. *Conduct of Meetings*. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.13. *Notice of Stockholder Business and Nominations*.

(A) *Annual Meetings of Stockholders*.

(1) Nominations of persons for election to the Board of Directors of the corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or any committee thereof or (c) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.13.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.13, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90^{th}) day, nor earlier than the close of business on the one hundred twentieth (120^{th}) day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that no annual meeting was held in the previous year, the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such annual meeting or the tenth (10^{th}) day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the corporation, (v) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 1.13 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. The corporation may require any proposed nominee to furnish such other information as the corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 1.13 and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.13 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the corporation.

(B) *Special Meetings of Stockholders*. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.13. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 1.13 shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such special meeting or the tenth (10^{th}) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request.

(C) *General*.

(1) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.13 shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.13. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(vi) of this Section 1.13) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.13, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 1.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 1.13, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission (the "***SEC***") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 1.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.13; provided however, that any references in these bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.13 (including paragraphs (A)(1)(c) and (B) hereof), and compliance with paragraphs (A)(1)(c) and (B) of this Section 1.13 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of (A)(2), business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 1.13 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation.

ARTICLE II
Board of Directors

Section 2.1. *Number; Qualifications*. Subject to the certificate of incorporation, the Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders.

Section 2.2. *Election; Resignation; Vacancies*. The Board of Directors shall initially consist of the persons named as directors in the certificate of incorporation or elected by the incorporator of the corporation, and each director so elected shall hold office until the first annual meeting of stockholders or until his or her successor is duly elected and qualified. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his or her successor is duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the corporation. Unless otherwise provided by law or the certificate of incorporation, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled only by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

Section 2.3. *Regular Meetings*. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 2.4. *Special Meetings*. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by (i) the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board; (ii) the chairman of the Board of Directors; or (iii) the chief executive officer or president of the Corporation. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four hours before the special meeting.

Section 2.5. *Telephonic Meetings Permitted*. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

Section 2.6. *Quorum; Vote Required for Action*. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the whole Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation, these bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. *Organization*. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors or, in his or her absence, by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. *Action by Unanimous Consent of Directors*. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

ARTICLE III
Committees

Section 3.1. *Committees*. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

Section 3.2. *Committee Rules*. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these bylaws.

ARTICLE IV
Officers

Section 4.1. *Officers*. The officers of the corporation shall consist of a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice Presidents, a Secretary, a Treasurer, a Controller and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these bylaws or as determined by the Board of Directors. Each officer shall be chosen by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly chosen and qualified, or until such person's earlier death, disqualification, resignation or removal. The Board of Directors may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these bylaws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 4.2. *Removal, Resignation and Vacancies*. Any officer of the corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon written notice to the corporation, without prejudice to the rights, if any, of the corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly chosen and qualified.

Section 4.3. *Chairman of the Board of Directors*. The Chairman of the Board of Directors shall be deemed an officer of the corporation, subject to the control of the Board of Directors, and shall report directly to the Board of Directors.

Section 4.4. *Chief Executive Officer*. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Chairman of the Board of Directors. Unless otherwise provided in these bylaws, all other officers of the corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders and of the Board of Directors.

Section 4.5. *Chief Financial Officer*. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.6. *President*. The President shall be the chief operating officer of the corporation, with general responsibility for the management and control of the operations of the corporation. The President shall have the power to affix the signature of the corporation to all contracts that have been authorized by the Board of Directors or the Chief Executive Officer. The President shall, when requested, counsel with and advise the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.7. *Vice Presidents*. The Vice President shall have such powers and duties as shall be prescribed by his or her superior officer or the Chief Executive Officer. A Vice President shall, when requested, counsel with and advise the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.8. *Treasurer*. The Treasurer shall supervise and be responsible for all the funds and securities of the corporation, the deposit of all moneys and other valuables to the credit of the corporation in depositories of the corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the corporation is a party, the disbursement of funds of the corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.9. *Controller*. The Controller shall be the chief accounting officer of the corporation. The Controller shall, when requested, counsel with any advice the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or the Chief Financial Officer or as the Board of Directors may from time to time determine.

Section 4.10. *Secretary*. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the corporation are duly given and served; (iii) to act as custodian of the seal of the corporation and affix the seal or cause it to be affixed to all certificates of stock of the corporation and to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; (iv) to have charge of the books, records and papers of the corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the corporation and shall perform such other duties as such officer may agree with the Chief Executive Officer or as the Board of Directors may from time to time determine.

Section 4.11. *Additional Matters*. The Chief Executive Officer and the Chief Financial Officer of the corporation shall have the authority to designate employees of the corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the corporation unless elected by the Board of Directors.

ARTICLE V
Stock

Section 5.1. *Certificates*. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.2. *Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates*. The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

ARTICLE VI
Indemnification and Advancement of Expenses

Section 6.1. *Right to Indemnification*. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the corporation.

Section 6.2. *Prepayment of Expenses*. The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided*, *however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3. *Claims*. If a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under this Article VI is not paid in full within thirty (30) days after a written claim therefor by the Covered Person has been received by the corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.4. *Non-exclusivity of Rights*. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. *Other Sources*. The corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. *Amendment or Repeal*. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

Section 6.7. *Other Indemnification and Advancement of Expenses*. This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII
Miscellaneous

Section 7.1. *Fiscal Year*. The fiscal year of the corporation shall be determined by resolution of the Board of Directors.

Section 7.2. *Manner of Notice*. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the corporation under any provision of applicable law, the certificate of incorporation, or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within sixty (60) days of having been given written notice by the corporation of its intention to send the single notice permitted under this Section 7.3, shall be deemed to have consented to receiving such single written notice. Notice to directors may be given by telecopier, telephone or other means of electronic transmission.

Section 7.3. *Waiver of Notice of Meetings of Stockholders, Directors and Committees*. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 7.4. *Form of Records*. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 7.5. *Amendment of Bylaws*. These bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors or by the affirmative vote of sixty-six and two-thirds percent of the outstanding voting power of the corporation.

Exhibit 4.1

CERTIFICATE OF DESIGNATION, PREFERENCES AND

RIGHTS

OF

SERIES B CONVERTIBLE PREFERRED STOCK

OF

BLUE WATER BIOTECH, INC.

Pursuant to Section 151 of the General
Corporation Law of the State of Delaware

The undersigned officer of Blue Water Biotech, Inc., a corporation organization and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. He is the Chief Executive Officer of the Corporation.

2. The Corporation is authorized to issue 10,000,000 shares of preferred stock, of which 10,000 were authorized as Series A Convertible Preferred Stock, of which 3,000 are issued and outstanding.

3. That pursuant to the authority conferred upon the board of directors of the Corporation (the "Board of Directors") by the amended and restated certificate of incorporation of the Corporation, as amended (the "Certificate of Incorporation"), the Board of Directors authorized the series of preferred stock hereinafter provided for and has adopted the following resolution creating a series of 2,700,000 shares of preferred stock designated as "Series B Convertible Preferred Stock":

4. The following resolutions were duly adopted by the Board of Directors:

WHEREAS, the Certificate of Incorporation of the Corporation provides for a class of its authorized stock known as preferred stock, consisting of 10,000,000 shares, $0.0001 par value per share, issuable from time to time in one or more series;

WHEREAS, Board of Directors has the full and complete authority to establish one or more series or classes and to issue shares of preferred stock, and to fix, determine and vary the voting rights, designations, preferences, restrictions, qualifications, privileges, limitation, options, conversion rights and other special rights of each series or class of preferred stock, including, but not limited to, dividend rates and manner of payment, preferential amounts payable upon voluntary or involuntary liquidation, voting rights, conversion rights, redemption prices, terms and conditions, and sinking fund and stock purchase prices, terms and conditions; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of up to 2,700,000 shares of the preferred stock which the Corporation has the authority to issue, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 7(b).

"Business Day" means any day other than a Saturday, Sunday or a legal holiday on which commercial banking institutions in New York, New York are authorized to close for business; provided that banks shall not be deemed to be authorized or obligated to be closed due to a "shelter in place" or similar closure of physical branch locations at the direction of any governmental authority if such banks' electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

"Cash Settlement Date" shall have the meaning set forth in Section 6(g).

"Common Stock" means the Corporation's common stock, par value $0.00001 per share.

"Conversion Date" shall have the meaning set forth in Section 6(a).

"Conversion Ratio" shall have the meaning set forth in Section 6(a).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Converted Stock" shall have the meaning set forth in Section 6(a)

"Delaware Courts" shall have the meaning set forth in Section 9(c)

"Fair Value" shall have the meaning set forth in Section 6(g)

"Fundamental Transaction" shall have the meaning set forth in Section 7(b).

"Holder" means, as of a given point in time, a Person who holds Preferred Stock.

"Junior Securities" means the Common Stock and all securities of the Corporation other than those which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

"Liquidation" shall have the meaning set forth in Section 5.

"Original Issue Date" means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

"Person" means an individual, corporation, exempted company, partnership (including a general partnership, limited partnership, exempted limited partnership or limited liability partnership), limited liability company, association, trust or other entity or organization, including a government, domestic or foreign, or political subdivision thereof, or an agency or instrumentality thereof.

"Preferred Stock" shall have the meaning set forth in Section 2.

"PMX Director" shall have the meaning set forth in Section 4(a).

"Registration Statement" means the registration statement to be filed by the Corporation with the SEC pursuant to the Share Exchange Agreement in connection with the registration under the Securities Act of the Conversion Shares, which shall also contain a proxy statement.

"Request" shall have the meaning set forth in Section 6(g)

"Requisite Holders" means holders of record of a majority of the outstanding shares of Preferred Stock (excluding, for the avoidance of doubt, any shares of Preferred Stock that are held by the Corporation or its controlled Affiliates (including in treasury), whether repurchased, redeemed or otherwise acquired which shall not be entitled to a vote).

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Exchange Agreement" means the Share Exchange Agreement, dated as of December 15, 2023, among the Corporation, Proteomedix AG ("PMX"), Thomas Meier, in the capacity as Sellers' Representative thereunder, and each of the holders of outstanding capital stock or convertible securities of PMX, as amended, modified or supplemented from time to time in accordance with its terms.

"Stated Value" shall have the meaning set forth in Section 2.

"Stockholder Approval" means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the stockholders of the Corporation with respect to the transactions contemplated by the Transaction Documents, including the issuance of all of the Conversion Shares in excess of 20% of the issued and outstanding Common Stock on the Original Issue Date.

"Trading Day" means a day on which the principal Trading Market is open for business.

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

"Transaction Documents" means this Certificate of Designation, the Share Exchange Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Share Exchange Agreement.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as the Series B Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 2,700,000. Each share of Preferred Stock shall have a par value of $0.00001 and a stated value equal to $24.91 subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock (the "Stated Value").

Section 3. Dividends.

(a) Dividend Parity. Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of Preferred Stock (on an as-if-converted-to-Common-Stock basis) equal to and in the same form, and in the same manner, as dividends (other than dividends on shares of the Common Stock payable in the form of Common Stock) actually paid on shares of the Common Stock when, as and if such dividends (other than dividends payable in the form of Common Stock) are paid on shares of the Common Stock. Other than as set forth in this Section 3, no other dividends shall be paid on shares of Preferred Stock, and the Corporation shall pay no dividends (other than dividends payable in the form of Common Stock) on shares of the Common Stock unless it simultaneously complies with the previous sentence.

(b) Payment. Upon occurrence of a Liquidation, all accrued and unpaid dividends, whether or not earned or declared, to and until the date of such event, shall become immediately due and payable and shall be paid in full. If at any time that dividends are declared by the Board of Directors and the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under Subsection (a), the holders of shares of Preferred Stock shall share ratably in any dividends in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such dividends if all amounts payable on or with respect to such shares were paid in full.

Section 4. Voting Rights.

(a) The Requisite Holders, voting exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "PMX Director"). Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the Preferred Stock. If the holders of Preferred Stock fail to elect a director pursuant to this Subsection (a), then any directorship not so filled shall remain vacant until such time as the holders of the Preferred Stock elect a person to fill such directorship; and no such directorship may be filled by stockholders of the Corporation other than by the Holders of Preferred Stock. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of Preferred Stock shall constitute a quorum for the purpose of electing such director.

(b) For as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Requisite Holders, voting exclusively and as a separate class:

(i) (x) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, or (y) amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or bylaws of the Corporation, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of Preferred Stock, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock, regardless of whether, in the case of (x) and (y), any of the foregoing actions shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise;

(ii) issue further shares of the Preferred Stock or increase or decrease (other than by conversion) the number of authorized shares of the Preferred Stock;

(iii) authorize or create any class or series of stock, or issue shares of any class or series of stock, that has powers, preferences or rights – including, but not limited to, ranking as to distribution of assets upon a Liquidation (as defined in Section 5) – senior to the Preferred Stock; or

(iv) enter into any agreement with respect to any of the foregoing.

(c) Except as otherwise provided herein or required by law, the Preferred Stock shall have no voting rights. Holders of shares of Common Stock acquired upon the conversion of Preferred Stock shall be entitled to the same voting rights as each holder of Common Stock.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), each Holder shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation the same amount that a holder of Common Stock would receive if such Holder's Preferred Stock were fully converted to Common Stock at the Conversion Ratio plus an additional amount equal to any dividends declared but unpaid to such shares, which amounts shall be paid *pari passu* with all holders of Common Stock.

Section 6. Conversion.

(a) Automatic Conversion. Upon the latest date (the "Conversion Date") upon which (i) the Corporation has received the Stockholder Approval with respect to the issuance of all of the Conversion Shares in excess of 20% of the issued and outstanding Common Stock on the Original Issue Date and (ii) the date upon which the Corporation has effected an increase in the number of shares of Common Stock authorized under its certificate of incorporation, to the extent required to consummate the transactions contemplated by the Transaction Documents, each outstanding share of Preferred Stock shall be automatically converted into 100 shares of Common Stock (subject to adjustment as set forth herein) (the "Conversion Ratio"). The shares of Preferred Stock that are converted pursuant to this Section 6 are referred to as the "Converted Stock".

(b) Delivery of Conversion Shares Upon Conversion. Not later than five (5) Trading Days after the Conversion Date, the Corporation shall deliver, or cause to be delivered, to the Holders such number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Share Exchange Agreement). The Conversion Shares shall be issued as follows:

(i) Converted Stock that is registered in book entry form shall be automatically cancelled upon the Conversion Date and converted into the corresponding Conversion Shares, which shares shall be issued in book entry form and without any action on the part of the Holders and shall be delivered to the Holders within one (1) Business Day of the effectiveness of the conversion.

(ii) Converted Stock that is issued in certificated form shall be deemed converted into the corresponding Conversion Shares on the Conversion Date and the Holder's rights as a holder of such shares of Converted Stock shall cease and terminate on such date, excepting only the right to receive the Conversion Shares upon the Holder tendering to the Corporation (or its designated agent) the stock certificate(s) (duly endorsed) representing such certificated Converted Stock and any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Preferred Stock, including pursuant to Section 6(g) hereof.

(c) Delivery of Certificate or Book Entry Form. Upon Conversion, not later than two (2) Trading Days after the Conversion Date, or if the Holder requests the issuance of physical certificate(s), two (2) Trading Days after receipt by the Corporation of the original certificate(s) representing such shares of Preferred Stock being converted, duly endorsed by the Holder (the "Share Delivery Date"), the Corporation shall either: (a) in the event that the Holder has so elected in a written notice to the Corporation, deliver, or cause to be delivered, to the converting Holder a physical certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Preferred Stock or (b) otherwise shall issue and deliver to such Holder or such Holder's nominees, documentation of the book entry for the number of Conversion Shares being acquired.

(d) Reservation of Shares Issuable Upon Conversion. Subject to the receipt of the Stockholder Approval, the Corporation shall reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders, not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Share Exchange Agreement) be issuable upon the conversion of the then outstanding shares of Preferred Stock. All shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered in accordance with such Registration Statement.

(e) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to receive upon such conversion, the Corporation shall round down to the next whole share of Common Stock.

(f) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all transfer agent fees required for same-day processing of any Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(g) Cash Settlement. If, at any time after the earlier of the date of the Stockholder Approval or January 1, 2025 (the earliest such date, the "Cash Settlement Date"), the Corporation (x) has obtained the Stockholder Approval but fails to or has failed to deliver to a Holder certificate or certificates representing the Conversion Shares, or deliver documentation of book entry form of (or cause its transfer agent to electronically deliver such evidence) Conversion Shares on or prior to the fifth (5th) Business Day after the date of the Stockholder Approval, or (y) has failed to obtain the Stockholder Approval, the Corporation shall, in either case, at the request of the Holder (a "Request") setting forth such Holder's request to cash settle a number of shares of Preferred Stock, pay to such Holder an amount in cash equal to (i) the Fair Value (defined below) of the shares of Preferred Stock set forth in such Request multiplied by (ii) the Conversion Ratio in effect on the Trading Day on which the Request is delivered to the Corporation, with such payment to be made within two (2) Business Days from the date of the Request by the Holder, whereupon, after payment in full thereon by the Corporation, the Corporation's obligations to deliver such shares underlying the Request shall be extinguished. For purposes of this Section 6(g), the "Fair Value" of shares shall be fixed with reference to the last reported closing stock price on the principal Trading Market of the Common Stock on which the Common Stock is listed as of the Trading Day on which the Request is delivered to the Corporation.

(h) Remedies. Notwithstanding the cancellation of the Converted Stock pursuant to this Section 6, Holders of Converted Stock shall continue to have any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert the Converted Stock.

Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while the Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of the Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately after such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately before such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7(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 or combination. Upon the occurrence of each adjustment to the Conversion Ratio, the Corporation, at its expense, shall, as promptly as reasonably possible but in any event not later than five (5) Business Days thereafter, compute such adjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth such adjustment and showing in detail the facts upon which such adjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any Holder (but in any event not later than five (5) Business Days thereafter), furnish or cause to be furnished to such Holder a certificate setting forth (i) the Conversion Ratio then in effect and (ii) the number of shares of Common Stock which then would be received by such Holder upon conversion.

(b) Fundamental Transaction. If, at any time while the Preferred Stock is outstanding, either (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person or any stock sale to, or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, share exchange or scheme of arrangement) with or into another Person (other than such a transaction in which the Corporation is the surviving or continuing entity and holds at least a majority of the Common Stock after giving effect to the transaction and its Common Stock is not exchanged for or converted into other securities, cash or property), (B) the Corporation effects any sale, lease, transfer or exclusive license of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which more than 50% of the Common Stock not held by the Corporation or such Person is exchanged for or converted into other securities, cash or property, or (D) the Corporation effects any reclassification of the Common Stock or any compulsory share exchange pursuant (other than as a result of a dividend, subdivision or combination covered by Section 7(a) above) to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "Fundamental Transaction"), then, in connection with such Fundamental Transaction, the Holders shall receive in the Fundamental Transaction, the same kind and amount of securities, cash or property that a holder of Common Stock would receive if such Holder's Preferred Stock were fully converted to Common Stock, plus an additional amount equal to any dividends declared but unpaid to such shares, which amounts shall be paid *pari passu* with all holders of Common Stock in the Fundamental Transaction (the "Alternate Consideration"). If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration it receives in such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall assume in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 7(b) pursuant to written agreements in form and substance approved by the Requisite Holders prior to such Fundamental Transaction. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(b). The Corporation shall cause to be delivered to each Holder, at its last address as it shall appear upon the stock books of the Corporation, written notice of any Fundamental Transaction at least 20 calendar days prior to the date on which such Fundamental Transaction is expected to become effective or close.

(c) Calculations. All calculations under this Section 7 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 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

Section 8. No Redemption. The shares of Preferred Stock shall not be redeemable; provided, however, that the foregoing shall not limit the ability of the Corporation to purchase or otherwise deal in such shares to the extent otherwise permitted hereby and by law, nor shall the foregoing limit the Holder's rights under Section 6.

Section 9. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder shall be in writing and delivered personally, by e-mail attachment, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at 201 E. Fifth Street, Suite 1900, Cincinnati, OH, 45202, Attention: Neil Campbell, e-mail address ncampbell@bwbioinc.com, or such other e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 9. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by e-mail attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Corporation, or if no such e-mail address or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Share Exchange Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via e-mail attachment at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via e-mail attachment at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

(c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the State of Delaware (the "Delaware Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Delaware Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Delaware Courts, or such Delaware Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof 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 Certificate of Designation 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 other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) Status of Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Share Exchange Agreement. If any shares of Preferred Stock shall be redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series B Convertible Preferred Stock.

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IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15th day of December, 2023.

/s/ Neil Campbell

Name: Neil Campbell
Title: Chief Executive Officer

Exhibit 10.1

EXECUTION VERSION

FORM OF LOCK-UP AGREEMENT

THIS LOCK-UP AGREEMENT (this "***Agreement***") is made and entered into as of December 15, 2023 by and between (i) **Blue Water Biotech, Inc.**, a Delaware corporation (together with its successors, the "***Buyer***"), and (ii) the undersigned ("***Holder***"). Any capitalized term used but not defined in this Agreement will have the meaning ascribed to such term in the Share Exchange Agreement (as defined below).

WHEREAS, on December 15, 2023, the Buyer, Proteomedix AG, a Swiss company (the "***Company***"), the Sellers (as defined in the Share Exchange Agreement) and the other parties thereto entered into that certain Share Exchange Agreement (as may be amended, modified, supplemented from time to time in accordance with the terms thereof, the "***Share Exchange Agreement***"), pursuant to which, among other matters, upon the consummation of the transactions contemplated thereby (the "***Closing***"), Buyer shall purchase from Sellers, and Sellers shall sell to Buyer, all of the issued and outstanding Company Shares in exchange for newly issued shares of common stock and newly issued shares of preferred stock of Buyer;

WHEREAS, as of the date hereof, Holder is a holder of shares of the Company and/or other Company securities, or may become a holder of shares of the Company and/or other Company securities in connection with the transactions contemplated by the Share Exchange Agreement, in such amounts and classes or series as set forth underneath Holder's name on the signature page hereto; and

WHEREAS, pursuant to the Share Exchange Agreement, and in view of the valuable consideration to be received by Holder thereunder, the parties desire to enter into this Agreement, pursuant to which the Exchange Shares received by Holder in the Share Exchange (all such securities, together with any securities paid as dividends or distributions with respect to such securities or into which such securities are exchanged or converted, the *"**Restricted Securities**"*), shall become subject to limitations on disposition as set forth herein. For the avoidance of doubt, Restricted Securities shall include all shares of Buyer Common Stock issued to Holder upon conversion of the Preferred Shares.

NOW, THEREFORE, in consideration of the premises set forth above, which are incorporated in this Agreement as if fully set forth below, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Lock-Up Provisions.

(a) Holder hereby agrees not to, during the period (the "***Lock-Up Period***") commencing from the Closing and ending on the earlier to occur of (i) December 31, 2024 and (ii) the six (6) month anniversary of the date Buyer receives the Stockholder Approval: (A) lend, offer, pledge, hypothecate, encumber, donate, assign, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Restricted Securities, (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Restricted Securities, or (C) publicly disclose the intention to do any of the foregoing, whether any such transaction described in clauses (A), (B) or (C) above is to be settled by delivery of Restricted Securities or other securities, in cash or otherwise (any of the foregoing described in clauses (A), (B) or (C), a "***Prohibited Transfer***"). The foregoing sentence shall not apply to the transfer of any or all of the Restricted Securities owned by Holder (I) by gift, will or intestate succession upon the death of Holder, (II) to any Permitted Transferee (as defined below) or (III) pursuant to a court order or settlement agreement related to the distribution of assets in connection with the dissolution of marriage or civil union; provided, however, that in any of cases (I), (II) or (III) it shall, except as otherwise expressly provided below, be a condition to such transfer that the transferee executes and delivers to the Buyer an agreement (a "***Transferee Agreement***") stating that the transferee is receiving and holding the Restricted Securities subject to the provisions of this Agreement applicable to Holder, and there shall be no further transfer of such Restricted Securities except in accordance with this Agreement. As used in this Agreement, the term "***Permitted Transferee***" shall mean: (i) the members of Holder's immediate family (for purposes of this Agreement, "immediate family" shall mean with respect to any natural person, any of the following: such person's spouse, the siblings of such person and his or her spouse, and the direct descendants and ascendants (including adopted and step children and parents) of such person and his or her spouses and siblings), (ii) any trust for the direct or indirect benefit of Holder or the immediate family of Holder, (iii) if Holder is a trust, the trustor or beneficiary of such trust or to the estate of a beneficiary of such trust, and (iv) if Holder is an entity, as a distribution to limited partners, shareholders, members of, or owners of similar equity interests in Holder (*provided*, *however*, that if such distributee is not, taken together with its affiliates, a beneficial owner of at least five percent (5%) of the total issued and outstanding equity interests in the Seller, then such distributee will not be required to execute and deliver a Transferee Agreement to the Buyer). Holder further agrees to execute such agreements as may be reasonably requested by Buyer that are consistent with the foregoing or that are necessary to give further effect thereto.

(b) If any Prohibited Transfer is made or attempted contrary to the provisions of this Agreement, such purported Prohibited Transfer shall be null and void *ab initio*, and Buyer shall refuse to recognize any such purported transferee of the Restricted Securities as one of its equity holders for any purpose. In order to enforce this Section 1, Buyer may impose stop-transfer instructions with respect to the Restricted Securities of Holder (and Permitted Transferees and assigns thereof) until the end of the Lock-Up Period.

(c) During the Lock-Up Period, each certificate evidencing any Restricted Securities shall be stamped or otherwise imprinted with a legend in substantially the following form, in addition to any other applicable legends:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN A LOCK-UP AGREEMENT, DATED AS OF DECEMBER 15, 2023, BY AND BETWEEN THE ISSUER OF SUCH SECURITIES (THE "ISSUER") AND THE ISSUER'S SECURITY HOLDER NAMED THEREIN, AS AMENDED. A COPY OF SUCH LOCK-UP AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE ISSUER TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

(d) For the avoidance of any doubt, Holder shall retain all of its rights as a stockholder of the Buyer during the Lock-Up Period, including the right to vote any Restricted Securities.

2. Miscellaneous.

(a) Termination of Share Exchange Agreement. This Agreement shall be binding upon Holder upon Holder's execution and delivery of this Agreement, but this Agreement shall only become effective upon the Closing. Notwithstanding anything to the contrary contained herein, in the event that the Share Exchange Agreement is terminated in accordance with its terms prior to the Closing, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate and be of no further force or effect.

(b) Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. This Agreement and all obligations of Holder are personal to Holder and may not be transferred or delegated by Holder at any time. The Buyer may freely assign any or all of its rights under this Agreement, in whole or in part, to any successor entity (whether by merger, consolidation, equity sale, asset sale or otherwise) without obtaining the consent or approval of Holder.

(c) Third Parties. Nothing contained in this Agreement or in any instrument or document executed by any party in connection with the transactions contemplated hereby shall create any rights in, or be deemed to have been executed for the benefit of, any person or entity that is not a party hereto or thereto or a successor or permitted assign of such a party.

(d) Governing Law; Jurisdiction. This Agreement and any dispute or controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflict of law principles thereof. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court located in Delaware (or in any appellate courts thereof) (the "***Specified Courts***"). Each party hereto hereby (i) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto and (ii) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any Specified Court. Each party agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party irrevocably consents to the service of the summons and complaint and any other process in any other action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 2(g). Nothing in this Section 2(d) shall affect the right of any party to serve legal process in any other manner permitted by applicable Law.

(e) WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 2(E).

(f) Interpretation. The table of contents and the Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. In this Agreement, unless the context otherwise requires: (a) any pronoun used shall include the corresponding masculine, feminine or neuter forms, and words in the singular, including any defined terms, include the plural and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) any accounting term used and not otherwise defined in this Agreement or any Ancillary Document has the meaning assigned to such term in accordance with GAAP or Swiss GAAP; (d) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; (e) the words "herein," "hereto," and "hereby" and other words of similar import shall be deemed in each case to refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement; (f) the word "if" and other words of similar import when used herein shall be deemed in each case to be followed by the phrase "and only if"; (g) the term "or" means "and/or"; (h) any agreement, instrument, insurance policy, Law or Order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, insurance policy, Law or Order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein; (i) except as otherwise indicated, all references in this Agreement to the words "Section," "Article", "Schedule" and "Exhibit" are intended to refer to Sections, Articles, Schedules and Exhibits to this Agreement; and (j) the term "Dollars" or "$" means United States dollars. Any reference in this Agreement to a Person's directors shall include any member of such Person's governing body and any reference in this Agreement to a Person's officers shall include any Person filling a substantially similar position for such Person. Any reference in this Agreement to a Person's shareholders or stockholders shall include any applicable owners of the equity interests of such Person, in whatever form, including with respect to the Buyer its stockholders under the DGCL or its Organizational Documents. The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. To the extent that any Contract, document, certificate or instrument is represented and warranted to by the Company to be given, delivered, provided or made available by the Company, in order for such Contract, document, certificate or instrument to have been deemed to have been given, delivered, provided and made available to the Buyer or its Representatives, such Contract, document, certificate or instrument shall have been posted to the electronic data site maintained on behalf of the Company and made available to the Buyer and its Representatives and the Buyer and its Representatives have been given access to the electronic folders containing such information.

(g) Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (i) in person, (ii) by facsimile or other electronic means (including email), with affirmative confirmation of receipt, (iii) one Business Day after being sent, if sent by reputable, nationally recognized overnight courier service or (iv) three (3) Business Days after being mailed, if sent by registered or certified mail, pre-paid and return receipt requested, in each case to the applicable party at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Buyer at or prior to the Closing, to:

Blue Water Biotech, Inc.
201 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Attn: Dr. Neil Campbell, CEO
Telephone No.: (301) 792-4345
E-mail: ncampbell@bwbioinc.com

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

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas, 11th Floor
New York, New York 10105
Attn: Barry I. Grossman, Esq.
David Landau, Esq.
Telephone No.: (212) 370-1300
Email: bigrossman@egsllp.com
dlandau@egsllp.com

If to Holder, to the address set forth below Holder's name on the signature page to this Agreement.

(h) Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Buyer and Holder. No failure or delay by a party in exercising any right hereunder shall operate as a waiver thereof. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

(i) Authorization on Behalf of Buyer. The parties acknowledge and agree that notwithstanding anything to the contrary contained in this Agreement, any and all determinations, actions or other authorizations under this Agreement on behalf of Buyer after the Closing, including enforcing Buyer's rights and remedies under this Agreement, or providing any waivers or amendments with respect to this Agreement or the provisions hereof, shall solely be made, taken and authorized by the vote or consent of a majority of the Disinterested Directors. For purposes hereof, a "***Disinterested Director***" will mean an independent director disinterested in this Agreement or the Share Exchange Agreement (i.e., such independent director is not a Seller, an Affiliate of a Seller, or an officer, director, manager, employee, trustee or beneficiary of a Seller, nor an immediate family member of any of the foregoing) then serving on Buyer's board of directors. Without limiting the foregoing, in the event that Holder or Holder's Affiliate serves as a director, officer, employee or other authorized agent of Buyer or any of its current or future Affiliates, Holder and/or Holder's Affiliate shall have no authority, express or implied, to act or make any determination on behalf of Buyer or any of its current or future Affiliates in connection with this Agreement or any dispute or Action with respect hereto.

(j) Severability. In case any provision in this Agreement shall be held invalid, illegal or unenforceable in a jurisdiction, such provision shall be modified or deleted, as to the jurisdiction involved, only to the extent necessary to render the same valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby nor shall the validity, legality or enforceability of such provision be affected thereby in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out, so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision.

(k) Specific Performance. Holder acknowledges that its obligations under this Agreement are unique, recognizes and affirms that in the event of a breach of this Agreement by Holder, money damages will be inadequate and Buyer will have no adequate remedy at law, and agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by Holder in accordance with their specific terms or were otherwise breached. Accordingly, the Buyer shall be entitled to an injunction or restraining order to prevent breaches of this Agreement by Holder and to enforce specifically the terms and provisions hereof, without the requirement to post any bond or other security or to prove that money damages would be inadequate, this being in addition to any other right or remedy to which such party may be entitled under this Agreement, at law or in equity.

(l) Entire Agreement. This Agreement, along with the Share Exchange Agreement to the extent referenced herein, constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled; provided, that, for the avoidance of doubt, the foregoing shall not affect the rights and obligations of the parties under the Share Exchange Agreement or any Ancillary Document. Notwithstanding the foregoing, nothing in this Agreement shall limit any of the rights or remedies of the Buyer or any of the obligations of Holder under any other agreement between Holder and the Buyer or any certificate or instrument executed by Holder in favor of the Buyer, and nothing in any other agreement, certificate or instrument shall limit any of the rights or remedies of the Buyer or any of the obligations of Holder under this Agreement.

(m) Further Assurances. From time to time, at another party's request and without further consideration (but at the requesting party's reasonable cost and expense), each party shall execute and deliver such additional documents and take all such further action as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

(n) Counterparts; Facsimile. This Agreement may also be executed and delivered by facsimile signature or by email in portable document format in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

{Remainder of Page Intentionally Left Blank; Signature Pages Follow}

IN WITNESS WHEREOF, the parties have executed this Lock-Up Agreement as of the date first written above.

Buyer:

Blue Water Biotech, Inc.

By: /s/ Dr. Neil Campbell
Name: Dr. Neil Campbell
Title: Chief Executive Officer

{Additional Signature on the Following Page}

{Signature Page to Lock-Up Agreement}

IN WITNESS WHEREOF, the parties have executed this Lock-Up Agreement as of the date first written above.

Holder:

Name of Holder: _____

By: _____
Name:
Title:

Number and Type of Company Shares:

Company Ordinary Shares: _____

Address for Notice:

Address: _____
_____
_____

Facsimile No.: _____
Telephone No.: _____
Email: _____:

{Signature Page to Lock-Up Agreement}

Exhibit 10.2

EXECUTION VERSION

FORM OF NON-COMPETITION AND NON-SOLICITATION AGREEMENT

THIS NON-COMPETITION AND NON-SOLICITATION AGREEMENT (this "***Agreement***") is being executed and delivered as of December 15, 2023, by [_____] (the "***Subject Party***") in favor of and for the benefit of Blue Water Biotech, Inc., a Delaware corporation (the "***Buyer***"). Any capitalized term used but not defined in this Agreement will have the meaning ascribed to such term in the Share Exchange Agreement.

WHEREAS, on December 15, 2023, the Buyer entered into a Share Exchange Agreement by and among the Buyer, Proteomedix AG, a Swiss company (the "***Company***"), the Sellers (as defined in the Share Exchange Agreement), and Thomas Meier, in the capacity as representative of Sellers in accordance with the terms and conditions of the Share Exchange Agreement, pursuant to which, among other matters, the Sellers shall sell to Buyer, and Buyer shall purchase from the Sellers, all of the issued and outstanding equity interests of the Company ("***Share Exchange Agreement***");

WHEREAS, the Company (and after the Closing, Buyer), directly and indirectly through its Subsidiaries, engages in the business of developing tests that use proprietary protein biomarkers for the detection of prostate cancer (the "***Business***");

WHEREAS, in connection with, and as a condition to the execution and delivery of the Share Exchange Agreement and the consummation of the other transactions contemplated by the Share Exchange Agreement (collectively, the "***Transactions***"), and to enable the Buyer to secure more fully the benefits of the Transactions, including the protection and maintenance of the goodwill and confidential information of the Business, the Buyer has required that the Subject Party enter into this Agreement;

WHEREAS, the Subject Party is entering into this Agreement in order to induce the Buyer to enter into the Share Exchange Agreement and consummate the Transactions, pursuant to which the Subject Party will directly or indirectly receive a material benefit; and

WHEREAS, the Subject Party, as a current direct or indirect equity holder, director or officer of the Company, has contributed to the value of the Company and its Subsidiaries and has obtained extensive and valuable knowledge and confidential information concerning the business of the Company and their Subsidiaries (and after Closing, Buyer).

NOW, THEREFORE, in order to induce the Buyer to consummate the Transactions, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Subject Party hereby agrees as follows:

1. Restriction on Competition.

(a) Restriction. The Subject Party hereby agrees that during the period from the Closing until the three (3) year anniversary of the Closing Date (such period, the "***Restricted Period***") the Subject Party will not, and will cause his or her Affiliates not to, without the prior written consent of the Buyer (which may be withheld in its sole discretion), anywhere in the world during the Restricted Period (the "***Territory***"), directly or indirectly engage or participate in the Business (other than through Buyer, the Company, Buyer's present and future Affiliates, successors and direct and indirect Subsidiaries or the Company's present and future Affiliates, successors and direct and indirect Subsidiaries (collectively, the "***Covered Party***" or "***Covered Parties***")) or own, manage, finance or control, or participate in the ownership, management, financing or control of, or become engaged or serve as an officer, director, member, partner, employee, agent, consultant, advisor or representative of, a business or entity (other than a Covered Party) that engages in the Business (a "***Competitor***"). Notwithstanding the foregoing, the Subject Party and his, her or its Affiliates may own passive investments of no more than two percent (2%) beneficial ownership of any class of outstanding equity interests in a Competitor that is publicly traded, so long as the Subject Party and his, her or its Affiliates and immediate family members are not directly or indirectly involved in the management or control of such Competitor ("***Permitted Ownership***").

(b) Acknowledgment. The Subject Party acknowledges and agrees, based upon the advice of legal counsel and/or the Subject Party's own education, experience and training, that (i) the Subject Party possesses knowledge of confidential information of the Covered Parties and the Business, (ii) the Subject Party's execution of this Agreement is a material inducement to the Buyer to consummate the Transactions and to realize the goodwill of the Company and its Subsidiaries, for which the Subject Party and/or his, her or its Affiliates will receive a substantial direct or indirect financial benefit, and that the Buyer would not have entered into the Share Exchange Agreement or consummated the Transactions but for the Subject Party's agreements set forth in this Agreement; (iii) it would impair the goodwill of the Covered Parties and reduce the value of the assets of the Covered Parties and cause serious and irreparable injury if the Subject Party and/or his, her or its Affiliates were to use their ability and knowledge by engaging in the Business in competition with a Covered Party, and/or to otherwise breach the obligations contained herein and that the Covered Parties would not have an adequate remedy at law because of the unique nature of the Business, (iv) the Subject Party and his, her or its Affiliates have no intention of engaging in the Business (other than through the Covered Parties) during the Restricted Period other than through Permitted Ownership, (v) the relevant public policy aspects of restrictive covenants, covenants not to compete and non-solicitation provisions have been discussed, and every effort has been made to limit the restrictions placed upon the Subject Party to those that are reasonable and necessary to protect the Covered Parties legitimate interests, (vi) the Covered Parties conduct and intend to conduct the Business in the Territory and compete with other businesses that are or could be located in any part of the Territory, (vii) the foregoing restrictions on competition are fair and reasonable in type of prohibited activity, geographic area covered, scope and duration, (viii) the consideration provided to the Subject Party under this Agreement and the Share Exchange Agreement is not illusory, and (ix) such provisions do not impose a greater restraint than is necessary to protect the goodwill or other business interests of the Covered Parties.

2. No Solicitation; No Disparagement.

(a) No Solicitation of Employees and Consultants. The Subject Party agrees that, during the Restricted Period, other than through Permitted Ownership, the Subject Party will not and will cause his Affiliates to not, without the prior written consent of the Buyer (which may be withheld in its sole discretion), either on its own behalf or on behalf of any other Person (other than, if applicable, a Covered Party in the performance of the Subject Party's duties on behalf of the Covered Parties), directly or indirectly: (i) hire or engage as an employee, independent contractor, consultant or otherwise any Covered Personnel (as defined below); (ii) solicit, induce, encourage or otherwise knowingly cause (or attempt to do any of the foregoing) any Covered Personnel to leave the service (whether as an employee, consultant or independent contractor) of any Covered Party; or (iii) in any way interfere with or attempt to interfere with the relationship between any Covered Personnel and any Covered Party; provided, however, the Subject Party and his, her or its Affiliates will not be deemed to have violated this Section 2(a) if any Covered Personnel voluntarily and independently solicits an offer of employment from the Subject Party or its Affiliate (or other Person whom any of them is acting on behalf of) by responding to a general advertisement or solicitation program conducted by or on behalf of the Subject Party or its Affiliate (or such other Person whom any of them is acting on behalf of) that is not targeted at such Covered Personnel or Covered Personnel generally, so long as such Covered Personnel is not hired. For purposes of this Agreement, "***Covered Personnel***" shall mean any Person who is or was an employee, consultant or independent contractor of the Covered Parties, as of the date of the relevant act prohibited by this Section 2(a) or during the one (1) year period preceding such date.

(b) Non-Solicitation of Customers and Suppliers. The Subject Party agrees that, during the Restricted Period, other than through Permitted Ownership, the Subject Party will not and it will cause his, her or its Affiliates to not, without the prior written consent of the Buyer (which may be withheld in its reasonable sole discretion), individually or on behalf of any other Person (other than, if applicable, a Covered Party in the performance of the Subject Party's duties on behalf of the Covered Parties), directly or indirectly: (i) solicit, induce, encourage or otherwise knowingly cause (or attempt to do any of the foregoing) any Covered Customer or Covered Supplier (each as defined below) to (A) cease being, or not become, a client, customer or supplier of any Covered Party with respect to the Business, or (B) reduce the amount of business of such Covered Customer or Covered Supplier with any Covered Party, or otherwise alter such business relationship in a manner materially adverse to any Covered Party, in either case, with respect to or relating to the Business; (ii) interfere with or disrupt (or attempt to interfere with or disrupt) the contractual relationship between any Covered Party and any Covered Customer or Covered Supplier; (iii) divert any business with any Covered Customer or Covered Supplier relating to the Business from a Covered Party; (iv) solicit for business, provide services to, engage in or do business with, any Covered Customer or Covered Supplier for products or services that are part of the Business; or (v) interfere with or disrupt (or attempt to interfere with or disrupt) any Person that was a vendor, supplier, distributor, agent or other service provider of a Covered Party at the time of such interference or disruption, for a purpose competitive with the Covered Parties as it relates to the Business. For purposes of this Agreement, a "***Covered Customer***" shall mean any Person who is or was an actual customer or client (or prospective customer or client with whom a Covered Party actively marketed or made or taken specific action to make a proposal) of a Covered Party, as of such date of the relevant act prohibited by this Section 2(b) or during the one (1) year period preceding such date, and "***Covered Supplier***" shall mean any vendor, supplier, distributor, agent or other service provider of a Covered Party, of a Covered Party, as of such date of the relevant act prohibited by this Section 2(b) or during the one (1) year period preceding such date.

(c) Non-Disparagement. The Subject Party agrees that from and after the Closing until the two (2) year anniversary of the end of the Restricted Period, the Subject Party will not and will cause his, her or its Affiliates to not, directly or indirectly engage in any conduct that involves the making or publishing (including through electronic mail distribution or online social media) of any written or oral statements or remarks (including the repetition or distribution of derogatory rumors, allegations, negative reports or comments) that are disparaging, deleterious or damaging to the integrity, reputation or good will of one or more Covered Parties or their respective management, officers, employees, independent contractors or consultants. Notwithstanding the foregoing, subject to Section 3 below, the provisions of this Section 2(c) shall not restrict the Subject Party or his, her or its Affiliates from providing truthful testimony or information in response to a subpoena or investigation by a Governmental Authority or in connection with any legal action by the Subject Party or his against any Covered Party under this Agreement, the Share Exchange Agreement or any other Ancillary Document that is asserted by the Subject Party or his, her or its Affiliate in good faith.

3. Confidentiality. From and after the Closing Date, the Subject Party will, and will cause his Affiliates and Representatives and his Affiliates' Representatives to, keep confidential and not (except, if applicable, in the performance of the Subject Party's duties on behalf of the Covered Parties) directly or indirectly use, disclose, reveal, publish, transfer or provide access to, any and all Covered Party Information without the prior written consent of the Buyer (which may be withheld in its sole discretion). As used in this Agreement, "***Covered Party Information***" means all material and information relating to the business, affairs and assets of any Covered Party, including material and information that concerns or relates to such Covered Party's bidding and proposal, technical information, computer hardware or software, administrative, management, operational, data processing, financial, marketing, customers, sales, human resources, employees, vendors, business development, planning and/or other business activities, regardless of whether such material and information is maintained in physical, electronic, or other form, that is: (A) gathered, compiled, generated, produced or maintained by such Covered Party through its Representatives, or provided to such Covered Party by its suppliers, service providers or customers; and (B) intended to be kept and maintained by such Covered Party or its Representatives, suppliers, service providers or customers in confidence. Covered Party Information also includes information disclosed to any Covered Party by a third party to the extent that a Covered Party has an obligation of confidentiality in connection therewith. The obligations set forth in this Section 3 will not apply to any Covered Party Information where the Subject Party can prove that such material or information: (i) is known or available through other lawful sources not bound by a confidentiality agreement or other confidentiality obligation with respect to such material or information; (ii) is or becomes publicly known through no violation of this Agreement or other non-disclosure obligation of the Subject Party or his Affiliates or any of his or their Representatives; (iii) is already in the possession of the Subject Party, his Affiliates or his or its Representatives at the time of disclosure through lawful sources not bound by a confidentiality agreement or other confidentiality obligation as evidenced by the Subject Party's, his Affiliates' or his or its Representatives' documents and records; or (iv) is required to be disclosed pursuant to an order of any administrative body or court of competent jurisdiction (provided that (A) the applicable Covered Party is given reasonable prior written notice, (B) the Subject Party cooperates (and causes its Representatives to cooperate) with any reasonable request of any Covered Party to seek to prevent or narrow such disclosure and (C) if after compliance with clauses (A) and (B) such disclosure is still required, the Subject Party, his Affiliates and his or its Representatives only disclose such portion of the Covered Party Information that is expressly required by such order, as it may be subsequently narrowed).

4. Representations and Warranties. The Subject Party hereby represents and warrants, to and for the benefit of the Covered Parties as of the date of this Agreement and as of the Closing Date, that: (a) the Subject Party has full power and capacity to execute and deliver, and to perform all of the Subject Party's obligations under, this Agreement; and (b) neither the execution and delivery of this Agreement nor the performance of the Subject Party's obligations hereunder will result directly or indirectly in a violation or breach of any agreement or obligation by which the Subject Party is a party or otherwise bound. By entering into this Agreement, the Subject Party certifies and acknowledges that the Subject Party has carefully read all of the provisions of this Agreement, and that the Subject Party voluntarily and knowingly enters into this Agreement.

5. Remedies. The covenants and undertakings of the Subject Party contained in this Agreement relate to matters which are of a special, unique and extraordinary character and a violation of any of the terms of this Agreement may cause irreparable injury to the Covered Parties, the amount of which may be impossible to estimate or determine and which cannot be adequately compensated. The Subject Party agrees that, in the event of any breach or threatened breach by the Subject Party of any covenant or obligation contained in this Agreement, each applicable Covered Party will be entitled to obtain the following remedies (in addition to, and not in lieu of, any other remedy at law or in equity or pursuant to the Share Exchange Agreement or the other Ancillary Documents that may be available to the Covered Parties, including monetary damages), and a court of competent jurisdiction may award: (i) an injunction, restraining order or other equitable relief restraining or preventing such breach or threatened breach, without the necessity of proving actual damages or that monetary damages would be insufficient or posting bond or security, which the Subject Party expressly waives; and (ii) recovery of the Covered Party's attorneys' fees and costs incurred in enforcing the Covered Party's rights under this Agreement. The Subject Party hereby consents to the award of any of the above remedies to the applicable Covered Party in connection with any such breach or threatened breach. The Subject Party hereby acknowledges and agrees that in the event of any breach of this Agreement, any value attributed or allocated to this Agreement (or any other non-competition agreement with the Subject Party) under or in connection with the Share Exchange Agreement shall not be considered a measure of, or a limit on, the damages of the Covered Parties.

6. Survival of Obligations. The expiration of the Restricted Period will not relieve the Subject Party of any obligation or liability arising from any breach by the Subject Party of this Agreement during the Restricted Period. The Subject Party further agrees that the time period during which the covenants contained in Section 1 and Section 2 of this Agreement will be effective will be computed by excluding from such computation any time during which the Subject Party is in violation of any provision of such Sections.

7. Miscellaneous.

(a) Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (i) in person, (ii) by facsimile or other electronic means, with affirmative confirmation of receipt, (iii) one Business Day after being sent, if sent by reputable, nationally recognized overnight courier service or (iv) three (3) Business Days after being mailed, if sent by registered or certified mail, pre-paid and return receipt requested, in each case to the applicable party at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Buyer or Kaival Labs (or any other Covered Party), to:	*with a copy (that will not constitute notice) to:*
Blue Water Biotech, Inc. 201 East Fifth Street, Suite 1900 Cincinnati, Ohio 45202 Attn: Dr. Neil Campbell, CEO Telephone No.: (301) 792-4345 E-mail: ncampbell@bwbioinc.com	Ellenoff Grossman & Schole LLP 1345 Avenue of the Americas New York, New York 10020 Attn: Barry I. Grossman, Esq. David Landau, Esq. Telephone No.: (212) 370-1300 E-mail: bigrossman@egsllp.com and dlandau@egsllp.com

If to the Subject Party, to:

the address below the Subject Party's name on the signature page to this Agreement.

(b) Integration and Non-Exclusivity. This Agreement, the Share Exchange Agreement and the other Ancillary Documents contain the entire agreement between the Subject Party and the Covered Parties concerning the subject matter hereof. Notwithstanding the foregoing, the rights and remedies of the Covered Parties under this Agreement are not exclusive of or limited by any other rights or remedies which they may have, whether at law, in equity, by contract or otherwise, all of which will be cumulative (and not alternative). Without limiting the generality of the foregoing, the rights and remedies of the Covered Parties, and the obligations and liabilities of the Subject Party and its Affiliates, under this Agreement, are in addition to their respective rights, remedies, obligations and liabilities (i) under the laws of unfair competition, misappropriation of trade secrets, or other requirements of statutory or common law, or any applicable rules and regulations and (ii) otherwise conferred by contract, including the Share Exchange Agreement and any other written agreement between the Subject Party or his, her or its Affiliate and of the Covered Parties. Nothing in the Share Exchange Agreement will limit any of the obligations, liabilities, rights or remedies of the Subject Party or the Covered Parties under this Agreement, nor will any breach of the Share Exchange Agreement or any other agreement between the Subject Party or his Affiliate and any of the Covered Parties limit or otherwise affect any right or remedy of the Covered Parties under this Agreement. If any term or condition of any other agreement between the Subject Party or his Affiliate and any of the Covered Parties conflicts or is inconsistent with the terms and conditions of this Agreement, the more restrictive terms will control as to the Subject Party or his, her or its Affiliate, as applicable.

(c) Severability; Reformation. Each provision of this Agreement is separable from every other provision of this Agreement. If any provision of this Agreement is found or held to be invalid, illegal or unenforceable, in whole or in part, by a court of competent jurisdiction, then (i) such provision will be deemed amended to conform to applicable laws so as to be valid, legal and enforceable to the fullest possible extent, (ii) the invalidity, illegality or unenforceability of such provision will not affect the validity, legality or enforceability of such provision under any other circumstances or in any other jurisdiction, and (iii) the invalidity, illegality or unenforceability of such provision will not affect the validity, legality or enforceability of the remainder of such provision or the validity, legality or enforceability of any other provision of this Agreement. The Subject Party and the Covered Parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out, so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision. Without limiting the foregoing, if any court of competent jurisdiction determines that any part hereof is unenforceable because of the duration, geographic area covered, scope of such provision, or otherwise, such court will have the power to reduce the duration, geographic area covered or scope of such provision, as the case may be, and, in its reduced form, such provision will then be enforceable. The Subject Party will, at a Covered Party's request, join such Covered Party in requesting that such court take such action.

(d) Amendment; Waiver. This Agreement may not be amended or modified in any respect, except by a written agreement executed by the Subject Party and the Buyer (or their respective permitted successors or assigns). No waiver will be effective unless it is expressly set forth in a written instrument executed by the waiving party (and if such waiving party is a Covered Party, the Buyer) and any such waiver will have no effect except in the specific instance in which it is given. Any delay or omission by a party in exercising its rights under this Agreement, or failure to insist upon strict compliance with any term, covenant, or condition of this Agreement will not be deemed a waiver of such term, covenant, condition or right, nor will any waiver or relinquishment of any right or power under this Agreement at any time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

(e) Governing Law; Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the State of Delaware without regard to the conflict of laws principles thereof. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in the Delaware Court of Chancery (and if such court lacks jurisdiction, any other state or federal court located in the State of Delaware (or in any appellate courts thereof) (the "***Specified Courts***"). Each party hereto hereby (a) submits to the exclusive jurisdiction of any Specified Court for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto, (b) irrevocably waives, and agrees not to assert by way of motion, defense or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by any Specified Court and (c) waives any bond, surety or other security that might be required of any other party with respect thereto. Each party agrees that a final judgment in any Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law or in equity. Each party irrevocably consents to the service of the summons and complaint and any other process in any other action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 7(a). Nothing in this Section 7(e) shall affect the right of any party to serve legal process in any other manner permitted by Law.

(f) WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(f). ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7(f) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

(g) Successors and Assigns; Third Party Beneficiaries. This Agreement will be binding upon the Subject Party and the Subject Party's estate, successors and assigns, and will inure to the benefit of the Covered Parties and their respective successors and assigns. Each Covered Party may freely assign any or all of its rights under this Agreement, at any time, in whole or in part, to a Covered Person or any Person which acquires, in one or more transactions, at least a majority of the equity securities (whether by equity sale, merger or otherwise) of such Covered Party or all or substantially all of the assets of such Covered Party and its Subsidiaries, taken as a whole, without obtaining the consent or approval of the Subject Party so long as such Person assumes in writing the obligations of its transferor under this Agreement. The Subject Party agrees that the obligations of the Subject Party under this Agreement are personal and will not be assigned by the Subject Party.

(h) Construction. The Subject Party acknowledges that the Subject Party has been represented, or had the opportunity to be represented by, counsel of the Subject Party's choice. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. Neither the drafting history nor the negotiating history of this Agreement will be used or referred to in connection with the construction or interpretation of this Agreement. The headings and subheadings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. In this Agreement: (i) the words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation"; (ii) the definitions contained herein are applicable to the singular as well as the plural forms of such terms; (iii) whenever required by the context, any pronoun shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (iv) the words "herein," "hereto," and "hereby" and other words of similar import shall be deemed in each case to refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement; (v) the word "if" and other words of similar import when used herein shall be deemed in each case to be followed by the phrase "and only if"; (vi) the term "or" means "and/or"; and (vii) any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent and references to all attachments thereto and instruments incorporated therein.

(i) Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. A photocopy, faxed, scanned and/or emailed copy of this Agreement or any signature page to this Agreement, shall have the same validity and enforceability as an originally signed copy.

(j) Effectiveness. This Agreement shall be binding upon the Subject Party upon the Subject Party's execution and delivery of this Agreement, but this Agreement shall only become effective upon the consummation of the Transactions. In the event that the Share Exchange Agreement is validly terminated in accordance with its terms prior to the consummation of the Transactions, this Agreement shall automatically terminate and become null and void, and the parties shall have no obligations hereunder.

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

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Non-Competition and Non-Solicitation Agreement as of the date first written above.

Subject Party:

[_____**]**

By: _____
Name:
Title:

Address for Notice:

Address: _____

_____

_____

Facsimile No.: _____
Telephone No.: _____
Email: _____

{Signature Page to Non-Competition Agreement}

Acknowledged and accepted as of the date first written above:

The Buyer:

BLUE WATER BIOTECH, INC.

By: /s/ Dr. Neil Campbell
Name: Dr. Neil Campbell
Title: Chief Executive Officer

{Signature Page to Non-Competition Agreement}

Exhibit 10.3

EXECUTION VERSION

STOCKHOLDER SUPPORT AGREEMENT

This STOCKHOLDER SUPPORT AGREEMENT (this "***Agreement***") is made and entered into as of December 15, 2023, by and among Blue Water Biotech, Inc., a Delaware corporation ("***Buyer***"), Proteomedix AG, a Swiss Company (the "***Company***"), and the stockholders of the Company whose names appear on the signature pages of this Agreement (each, a "***Company Stockholder***", and collectively, the "***Company Stockholders***").

WHEREAS, Buyer, the Company and Thomas Meier, in the capacity as Sellers' Representative, have entered into that certain Share Exchange Agreement (as it may be amended, restated or otherwise modified from time to time in accordance with the terms thereof, the "***SEA***") pursuant to which, among other things, the parties thereto intend to effect the exchange of all issued and outstanding shares of the Company for newly-issued shares of Buyer, all upon the terms and subject to the conditions set forth in the SEA.

WHEREAS, as of the date hereof, each Company Stockholder owns of record the number and type of Company Securities set forth opposite such Company Stockholder's name on Exhibit A attached hereto (all such securities and any Company Securities of which ownership of record or the power to vote is hereafter acquired by the Company Stockholders prior to the termination of this Agreement being referred to herein as the "***Securities***").

WHEREAS, in order to induce Buyer and the Company to enter into the SEA, the Company Stockholders are executing and delivering this Agreement to Buyer and the Company.

NOW THEREFORE, in consideration of the foregoing, which are incorporated into this Agreement as if fully set forth below, and of the mutual covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Defined terms. Capitalized terms used but not otherwise defined in this Agreement will have the meaning ascribed to such term in the SEA.

2. Agreement to Vote. Each Company Stockholder, by this Agreement, with respect to its Securities, severally and not jointly, hereby agrees (and agrees to execute such documents or certificates evidencing such agreement as Buyer and/or the Company may reasonably request in connection therewith) to vote, at any meeting of the Company Stockholders and in any action by written consent of the Company Stockholders, to approve the SEA and the transactions contemplated thereby, all of such Company Stockholder's Securities (a) in favor of the approval and adoption of the SEA and the transactions contemplated by the SEA, (b) in favor of any other matter reasonably necessary to the consummation of the transactions contemplated by the SEA and considered and voted upon by the Company Stockholders, and (c) against any action, agreement or transaction or proposal that would result in a breach of any covenant, representation or warranty or any other obligation or agreement of the Company under the SEA or that would reasonably be expected to result in the failure of the transactions contemplated by the SEA from being consummated. Each Company Stockholder acknowledges receipt and review of a copy of the SEA.

3. Transfer of Securities. Except as may be required by or permitted in the SEA, each Company Stockholder, with respect to its Securities, severally and not jointly, agrees that it shall not, directly or indirectly, (a) sell, assign, transfer (including by operation of law), lien, pledge, dispose of or otherwise encumber any of the Securities or otherwise agree to do any of the foregoing (unless the transferee agrees in writing to be bound by this Agreement), (b) deposit any Securities into a voting trust or enter into a voting agreement or arrangement or grant any proxy or power of attorney with respect thereto that is inconsistent with this Agreement, (c) enter into any contract, option or other arrangement or undertaking with respect to the direct or indirect acquisition or sale, assignment, transfer (including by operation of law) or other disposition of any Securities (unless the transferee agrees in writing to be bound by this Agreement), or (d) take any action that would have the effect of preventing or disabling the Company Stockholder from performing its obligations hereunder; provided that the foregoing shall not prohibit the transfer of the Securities by a Company Stockholder to an Affiliate of such Company Stockholder, but only if such Affiliate shall execute this Agreement or a joinder agreeing to become a party to this Agreement. From time to time, at the request of the Company, the Company Stockholders shall take all such further actions as may be necessary or appropriate to effect the purposes of this Agreement, and execute customary documents incident to the transactions contemplated by the SEA.

4. Representations and Warranties. Each Company Stockholder, severally and not jointly, represents and warrants for and on behalf of itself to Buyer as follows:

(a) The execution, delivery and performance by such Company Stockholder of this Agreement and the consummation by such Company Stockholder of the transactions contemplated hereby do not and will not (i) conflict with or violate any Law or Order applicable to such Company Stockholder, (ii) require any consent, approval or authorization of, declaration, filing or registration with, or notice to, any person or entity, (iii) result in the creation of any Lien on any Securities (other than pursuant to this Agreement, the SEA or the Ancillary Documents), or (iv) conflict with or result in a breach of or constitute a default under any provision of such Company Stockholder's Organizational Documents, as applicable.

(b) Such Company Stockholder owns of record and has good, valid and marketable title to the Securities set forth opposite such Company Stockholder's name on Exhibit A attached hereto, free and clear of any Lien (other than pursuant to this Agreement or transfer restrictions under applicable securities Laws or the Organizational Documents of such Company Stockholder, as applicable) and has the sole power (as currently in effect) to vote and the full right, power and authority to sell, transfer and deliver such Securities, and such Company Stockholder does not own, directly or indirectly, any other Securities other than as set forth opposite such Company Stockholder's name on Exhibit A.

(c) Such Company Stockholder has the power, authority and capacity to execute, deliver and perform this Agreement, and this Agreement has been duly authorized, executed and delivered by such Company Stockholder.

5. Termination. This Agreement and the obligations of the Company Stockholders under this Agreement shall automatically terminate upon the earliest of (a) the Conversion; (b) the termination of the SEA in accordance with its terms; or (c) the mutual written agreement of Buyer and the Company; provided, however, that each Company Stockholder, in its sole discretion, may terminate this Agreement solely with respect to its rights and obligations, following any material modification or amendment to, or the waiver of any provision of, the SEA, as in effect on the date hereof, that (A) modifies the conditions of the obligations of the parties to the SEA to consummate the transactions contemplated thereby in a manner that adversely affects in any material respect such Company Stockholder or (B) increases the aggregate amount of consideration payable to Sellers (as defined in the SEA). Upon termination or expiration of this Agreement, no party shall have any further obligations or liabilities under this Agreement; provided, however, such termination or expiration shall not relieve any party from liability for any willful breach of this Agreement occurring prior to its termination.

6. Miscellaneous.

(a) Except as otherwise provided herein or in the SEA or any Ancillary Document, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the transactions contemplated hereby are consummated.

(b) All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by telecopy or e-mail, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 5(b)):

If to Buyer, to:

Blue Water Biotech, Inc.
201 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Attn: Dr. Neil Campbell, CEO
Telephone No.: (301) 792-4345
E-mail: ncampbell@bwbioinc.com

with a copy (which will not constitute notice) to:

Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, New York 10105
Attn: Barry I. Grossman, Esq.
David Landau, Esq.
Telephone No.: (212) 370-1300
E-mail: bigrossman@egsllp.com and dlandau@egsllp.com

If to the Company, to:

Proteomedix AG
Wagistrasse 23
8952 Schlieren
Switzerland
Attn: Ralph Schiess, CEO
Telephone No.: +41 44 733 40 90
E-mail: schiess@proteomedix.com

with a copy (which will not constitute notice) to:

Nelson Mullins Riley & Scarborough LLP
One Financial Center
Boston, MA 02111
Attn: Benjamin M. Hron
Telephone No.: (617) 217-4607
E-mail: ben.hron@nelsonmullins.com

If to a Company Stockholder, to the address of such Company Stockholder set forth on Exhibit A attached hereto.

(c) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(d) This Agreement, the SEA and the Ancillary Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof, and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof. This Agreement shall not be assigned (whether pursuant to a merger, by operation of law or otherwise) without the prior written consent of the parties, and any attempt to do so without such consent shall be void ab initio.

(e) This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. No Company Stockholder shall be liable for the breach of this Agreement by any other Company Stockholder.

(f) This Agreement is intended to create, and creates a contractual relationship and is not intended to create, and does not create, any agency, partnership, joint venture or any like relationship between the parties hereto.

(g) The parties hereto agree that irreparable damage may occur in the event any provision of this Agreement is not performed in accordance with the terms hereof and that the parties shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy at law or in equity. Each of the parties agrees that it shall not oppose the granting of an injunction, specific performance or other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other parties have an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity. Any party seeking an injunction or injunctions to prevent breaches or threatened breaches of, or to enforce compliance with, this Agreement, when expressly available pursuant to the terms of this Agreement, shall not be required to provide any bond or other security in connection with any such Order.

(h) This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware applicable to contracts executed in and to be performed in that State without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction. All actions, suits or proceedings (each an "***Action***", and, collectively, "***Actions***"), arising out of or relating to this Agreement shall be heard and determined exclusively in any federal or state court having jurisdiction within the State of Delaware. The parties hereto hereby (i) submit to the exclusive jurisdiction of federal or state courts within the State of Delaware for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto and (ii) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated hereunder may not be enforced in or by any of the above-named courts.

(i) This Agreement may be executed and delivered (including by facsimile or portable document format (pdf) transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

(j) Without further consideration, each party shall use commercially reasonable efforts to execute and deliver or cause to be executed and delivered such additional documents and instruments and take all such further action as may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement.

(k) This Agreement shall not be effective or binding upon any Company Stockholder until such time as the SEA is executed by each of the parties thereto.

(l) If, and as often as, there are any changes in the Company or the Company Securities by way of equity split, dividend, combination or reclassification, or through merger, consolidation, reorganization, recapitalization or business combination, or by any other means, equitable adjustment shall be made to the provisions of this Agreement as may be required so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Company Stockholder and its Securities as so changed.

(m) Each of the parties hereto hereby waives to the fullest extent permitted by applicable law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each of the parties hereto (i) certifies that no Representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the transactions contemplated hereby, as applicable, by, among other things, the mutual waivers and certifications in this Section 6(m).

(n) Notwithstanding anything herein to the contrary, each Company Stockholder signs this Agreement solely in such Company Stockholder's capacity as a holder of securities of the Company, and not in any other capacity, and if applicable, this Agreement shall not limit or otherwise affect the actions of any affiliate, employee or designee of such Company Stockholder or any of its affiliates in his or her capacity as an officer or director of the Company.

[Signature pages follow]

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

PROTEOMEDIX AG

By: /s/ Ralph Schiess
Name: Ralph Schiess
Title: CEO

BLUE WATER BIOTECH, INC.

By: /s/ Dr. Neil Campbell
Name: Dr. Neil Campbell
Title: CEO

[Signature Page to Stockholder Support Agreement]

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

COMPANY STOCKHOLDER:

[ENTITY]

By: _____
Name:
Title:

[INDIVIDUAL]

By: _____

[Signature Page to Stockholder Support Agreement]

EXHIBIT A

LIST OF COMPANY STOCKHOLDERS

Name and Address	Number and type of Company Securities Owned

[Signature Page to Stockholder Support Agreement]

Exhibit 10.4

SUBSCRIPTION AGREEMENT

December 15, 2023

Blue Water Biotech Inc.
201 E. Fifth Street, Suite 1900
Cincinnati, OH 45202
Attn: Neil Campbell, Chief Executive Officer

Proteomedix AG
Wagistrasse 23
8952 Schlieren
Switzerland
Attn: Ralph Schiess, Chief Executive Officer

Ladies and Gentlemen:

In connection with the proposed acquisition (the "Transaction") by Blue Water Biotech, Inc., a Delaware corporation (together with its successors, the "Company") of Proteomedix AG, a Swiss company (together with its successors, the "Target"), pursuant to and in accordance with that certain Share Exchange Agreement, dated as of the date hereof (as it may be amended, the "Share Exchange Agreement"), by and among, the Company and the Target, the Company is seeking commitments to purchase up to Five Million Dollars ($5 million) of units (the "Units"), each unit comprised of (i) one (1) share of the Company's common stock, par value $0.00001 per share (the "Company Shares"), and (ii) one (1) pre-funded warrant (the "Warrants") to purchase 0.3 of one Company Share at an exercise price of $0.001 per share, for an aggregate purchase price per Unit of $0.25 (the "Purchase Price"), in a private placement to be conducted by the Company (the "Offering"). Pursuant to the Share Exchange Agreement, upon the consummation of the transactions contemplated by the Share Exchange Agreement (the "Transaction Closing"), among other matters: (i) the Company will acquire 100% of the equity interest of Target, with the Target continuing as a wholly-owned subsidiary of the Company (the "Merger"); (ii) the Target shareholders will receive (A) such number of Company Shares equivalent to 19.9% of the Company's then issued and outstanding Common Shares, and (B) 2,692,633 shares of Company Series B Convertible Preferred Stock; and (iii) upon receipt of approval for: (A) the Transaction; (B) the issuance of Conversion Shares (as defined herein); and (C) the issuance of the Offered Securities (as defined herein) by the Company's stockholders (the "Requisite Company Shareholder Approval"), the Target shareholders shall own, on a fully-diluted basis, approximately 79.8% of the Company's issued and outstanding Company Shares, and, assuming the Offering is fully subscribed, the Subscriber together with any Other Subscriber (as defined herein) shall own, in the aggregate, approximately 5.9% of the Company's issued and outstanding Company Shares. In connection therewith, the undersigned subscriber ("Subscriber"), the Company and Target agree in this subscription agreement (this "Subscription Agreement") as follows:

1. Subscription. Subscriber hereby irrevocably subscribes for and agrees to purchase from the Company, and the Company agrees to issue and sell to Subscriber, such number of Units as is set forth on the signature page of this Subscription Agreement (the "Offered Securities") at the Purchase Price per Unit and on the terms provided for herein. For the avoidance of doubt, assuming the Offering is fully subscribed, the total number of Offered Securities sold by the Company pursuant to this Subscription Agreement and Other Subscription Agreements (as defined herein), in the aggregate, shall be equivalent to approximately 5.9% of the Company's Common Shares on a post-Closing basis.

2. Closing; Delivery of Shares.

(a) The closing of the sale of Shares contemplated hereby (the "Closing", and the date on which the Closing actually occurs, the "Closing Date") is contingent upon the Company's receipt of Requisite Company Shareholder Approval and the substantially concurrent issuance of Conversion Shares. The Closing shall occur on the date of, and immediately prior to or simultaneously with, the issuance of Conversion Shares.

(b) The Company shall provide written notice (which may be via email) to Subscriber (the "Closing Notice") that the Company reasonably expects the Closing to occur on a date specified in the notice (the "Scheduled Closing Date") that is not less than three (3) business days after the Company's receipt of the Requisite Company Shareholder Approval, which Closing Notice shall contain the Company's wire instructions for an escrow account (the "Escrow Account") established by the Company with a third party escrow agent (the "Escrow Agent") to be identified in the Closing Notice. At least two (2) business days prior to the Scheduled Closing Date (but not earlier than two (2) business days after the Closing Notice), Subscriber shall deliver to the Escrow Account the aggregate Purchase Price for the Offered Securities subscribed (the "Aggregate Purchase Price") by wire transfer of United States dollars in immediately available funds. The wire transfer shall identify Subscriber, and unless otherwise agreed by the Company, the funds shall be wired from an account in Subscriber's name. Upon the Closing, the Company shall provide instructions to the Escrow Agent to release the funds in the Escrow Account to the Company against delivery to Subscriber of the Offered Securities, free and clear of any liens or other restrictions whatsoever (other than those arising under state or federal securities laws or those incurred by Subscriber), in book-entry form as set forth in Section 2(c) below.

(c) Promptly after the Closing, the Company shall deliver (or cause the delivery of) the Offered Securities to Subscriber (or its permitted assignee) in book-entry form with restrictive legends required by federal securities laws.

(d) The failure of the Closing to occur on the Scheduled Closing Date shall not terminate this Subscription Agreement or otherwise relieve either party of any of its obligations hereunder; any such termination will occur solely pursuant to Section 8 below. If (i) this Subscription Agreement is terminated prior to the Closing or (ii) the Closing Date does not occur within three (3) business days after the Scheduled Closing Date specified in the Closing Notice, and in either case, and any funds have already been sent by Subscriber to the Escrow Account, the Company shall or shall instruct the Escrow Agent to promptly (but not later than five (5) business days after the Scheduled Closing Date specified in the Closing Notice), return the funds delivered by Subscriber for payment of the Offered Securities by wire transfer in immediately available funds to the account specified in writing by Subscriber (provided, that the failure of the Closing Date to occur within such three (3) business day period and the return of the relevant funds shall not relieve Subscriber from its obligations under this Subscription Agreement for a subsequently rescheduled Closing Date determined by the Company in good faith).

3. Closing Conditions. In addition to the condition set forth in Section 2(a) above:

(a) The Closing is also subject to the satisfaction or valid waiver by each party of the conditions that, on the Closing Date:

(i) the Company has received the Requisite Company Shareholder Approval;

(ii) no suspension of the qualification of the Company Shares for offering or sale or trading in any jurisdiction, or initiation or threatening of any proceedings for any of such purposes, shall have occurred and be continuing;

(iii) no governmental authority of competent jurisdiction with respect to the sale of the Offered Securities shall have enacted, rendered, issued, promulgated, enforced or entered any judgment, order, law, rule or regulation (whether temporary, preliminary or permanent) which is then in effect and has the effect of making consummation of the transactions contemplated hereby illegal or otherwise restraining or prohibiting consummation of the transactions contemplated hereby;

(iv) the Company Shares included in the Units or issuable upon exercise of the Warrants and the Make-Whole Shares (as defined herein) shall have been approved for listing on the Nasdaq Capital Market ("Nasdaq") (or, at the election of the Company, the New York Stock Exchange ("NYSE")), subject to official notice of issuance; and

(v) all material conditions precedent to the issuance of Conversion Shares as set forth in the Share Exchange Agreement shall have been satisfied (as determined in good faith by the parties to the Share Exchange Agreement) or waived by the parties thereto in accordance with the requirements of the Share Exchange Agreement.

(b) The obligations of the Company to consummate the Closing are also subject to the satisfaction or valid waiver by the Company of the additional conditions that, on the Closing Date:

(i) all representations and warranties of Subscriber contained in this Subscription Agreement shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality, which representations and warranties shall be true and correct in all respects) at and as of the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality, which representations and warranties shall be true and correct in all respects) as of such date), and consummation of the Closing, shall constitute a reaffirmation by Subscriber of each of the representations, warranties and agreements of Subscriber contained in this Subscription Agreement as of the Closing Date; and

(ii) Subscriber shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by it at or prior to Closing.

(c) The obligations of Subscriber to consummate the Closing are also subject to the satisfaction or valid waiver by Subscriber of the additional conditions that, on the Closing Date:

(i) all representations and warranties of the Company contained in this Subscription Agreement shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect (as defined herein), which representations and warranties shall be true and correct in all respects) at and as of the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) as of such date), and consummation of the Closing, shall constitute a reaffirmation by the Company of each of the representations, warranties and agreements of such party contained in this Subscription Agreement as of the Closing Date; and

(ii) the Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by it at or prior to Closing.

4. Company Representations and Warranties. The Company represents and warrants to Subscriber that:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

(b) All corporate action required to be taken by the Company's Board of Directors in order to authorize the Company to enter into the Subscription Agreement and to issue the Offered Securities at the Closing been taken by the Company's Board of Directors, and as of the Closing, will have been taken by the Company's stockholders. This Subscription Agreement has been duly authorized, executed and delivered by the Company and is enforceable against the Company in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

(c) The Company Shares included in the Units or issuable upon exercise of the Warrants and the Make-Whole Shares have been duly authorized and, when issued and delivered to Subscriber against full payment therefor in accordance with the terms of this Subscription Agreement, will be free and clear of any liens or other restrictions whatsoever (other than any liens or restrictions created by Subscriber or imposed by applicable securities laws) in accordance with the terms of this Subscription Agreement, and will be validly issued, fully paid and non-assessable and will not have been issued in violation of or subject to any preemptive or similar rights created under the Company's organizational documents or applicable law. When paid for and issued in accordance with this Agreement, the Warrants will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity.

(d) As of the date hereof, the Company is authorized to issue 250,000,000 Company Shares, and 10,000,000 shares are preferred stock, par value $0.00001 per share ("Preferred Shares"), each having the rights and preferences set forth in the Company's Amended and Restated Certificate of Incorporation (the "Current Charter") as in effect as of the date hereof. As of the date of this Subscription Agreement, there are issued and outstanding (A) 18,903,731 Company Shares, (B) 3,260,000 Preferred Shares, (C) warrants to purchase up to 7,899,661 Company Shares, and (D) options to purchase up to 1,904,830 Company Shares. All of the Company's outstanding Company Shares and Preferred Shares are duly authorized, validly issued, fully paid and non-assessable and are not subject to or issued in violation of any purchase option, right of first refusal, preemptive right, subscription right or any similar right under any applicable provisions of the Delaware General Corporation Law, the Current Charter or any contract or agreement to which the Company is a party. None of the outstanding Company Shares or Preferred Shares have been issued in violation of any applicable securities laws. Except as set forth above in this Subscription Agreement and pursuant to the Other Subscription Agreements (as defined herein), the Share Exchange Agreement and the other agreements and arrangements referred to therein or in the SEC Reports, as of the date hereof, there are no outstanding options, warrants or other rights to subscribe for, purchase or acquire from the Company any equity interests in the Company or securities convertible into or exchangeable or exercisable for such equity interests. As of the date hereof, there are no shareholders agreements, voting trusts or other agreements or understandings to which the Company is a party or by which it is bound relating to the voting of any securities of the Company other than (x) as set forth in the SEC Reports or (y) as contemplated by the Share Exchange Agreement.

(e) Assuming the accuracy of Subscriber's representations and warranties in Section 6, the execution, delivery and performance of this Subscription Agreement and the consummation by the Company of the transactions that are the subject of this Subscription Agreement (including the issuance and sale of the Units) in compliance herewith will be done in accordance with the rules of Nasdaq (or NYSE, as applicable) and none of the foregoing will result in (i) a material breach or material violation of any of the terms or provisions of, or constitute a material default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Company or any of its subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, license, lease or any other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company is subject, which would have a (A) material adverse effect on the business, properties, financial condition, shareholders' equity or results of operations of the Company or (B) materially affect the validity of the Offered Securities or the legal authority or ability of the Company to perform in all material respects its obligations under the terms of this Subscription Agreement (each, a "Material Adverse Effect"); (ii) any material violation of the provisions of the organizational documents of the Company; or (iii) any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Company or any of its properties that would have a Material Adverse Effect.

(f) Other than Tungsten Advisors (the "Placement Agent"), the Company has not entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other person to any broker's or finder's fee or any other commission or similar fee in connection with the transactions contemplated by this Subscription Agreement for which Subscriber could become liable (it being understood that Subscriber will effectively bear its pro rata share of any such expense indirectly as a result of its investment in the Company). Other than Tungsten Advisors, the Company is not aware of any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Company Shares in the Offering.

(g) The Company is not, and immediately after receipt of payment for the Offered Securities, will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(h) Assuming the accuracy of Subscriber's representations and warranties set forth in Section 6, in connection with the offer, sale and delivery of the Offered Securities in the manner contemplated by this Subscription Agreement, it is not necessary to register the Offered Securities under the Securities Act of 1933, as amended (the "Securities Act"). The Offered Securities (i) were not offered to Subscriber by any form of general solicitation or general advertising, including methods described in Section 502(c) of Regulation D under the Securities Act and (ii) are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws.

(i) Except as disclosed in the SEC Reports, and except for any delays in the filing of the Company's periodic reports as they come due (which, as of the date hereof, have all since been filed with the SEC), as of their respective dates, all reports (the "SEC Reports") filed or required to be filed by the Company with the SEC complied in all material respects with the applicable requirements of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed as of the time of the execution of this Subscription Agreement and at the time of the Transaction Closing, contained or will contain any untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Except as disclosed in the SEC Reports, the financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods presented, subject, in the case of unaudited statements, to normal, year-end audit adjustments and the absence of complete footnotes. Except as disclosed in the SEC Reports or as would not have a Material Adverse Effect, the Company has timely filed with the SEC each SEC Report that the Company was required to file with the SEC. A copy of each SEC Report is available to Subscriber via the SEC's EDGAR system.

(j) Other than any other subscription agreements the "Other Subscription Agreements") entered into with any other subscriber (an "Other Subscriber") in connection with the Offering contemplated hereby and the Share Exchange Agreement, the Company has not entered into any side letter or similar agreement with any Other Subscriber in connection with such Other Subscriber's investment in the Company. No Other Subscription Agreement includes terms and conditions that are materially more advantageous to any such Other Subscriber than Subscriber hereunder, unless Subscriber has been offered the substantially similar benefits, and such Other Subscription Agreements have not been amended or modified in any material respect following the date of this Subscription Agreement unless Subscriber has been offered a substantially similar amendment. For the avoidance of doubt, the foregoing shall exclude any commercial arrangements entered into by the Company or the Target with Other Subscribers that have executed Other Subscription Agreements and that the Company or the Target has determined are strategic investors ("Strategic Arrangements").

(k) Except for such matters as have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect, as of the date hereof, there is no (i) action, suit, claim or other proceeding by or before any governmental or other regulatory or self-regulatory agency, entity or body with authority or jurisdiction over the Company, pending, or, to the knowledge of the Company, threatened in writing against the Company, or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against the Company;

(l) As of the date hereof, the Company Shares are registered pursuant to Section 12(b) of the Exchange Act and are listed for trading on Nasdaq. As of the date hereof, and except as disclosed in the SEC Reports, there is no suit, action, proceeding or investigation pending or, to the knowledge of the Company, threatened in writing against the Company by Nasdaq or the SEC (and the Company has not received any written notification of any intention by Nasdaq or the SEC) to deregister such shares or prohibit or terminate the listing of the Company Shares on Nasdaq. Other than as contemplated by the Share Exchange Agreement, the Company has taken no action intended to result in, or that would reasonably be expected to result in, the termination of the registration of such shares under the Exchange Act.

(m) The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the execution, delivery and performance of this Subscription Agreement, including the issuance of the Offered Securities (other than: (i) filings with the SEC; (ii) filings required by applicable state securities laws; (iii) the filings required in accordance with Section 7; (iv) those required by the Nasdaq (or if applicable, NYSE), including with respect to obtaining approval of the Company's stockholders; (v) filings pursuant to applicable antitrust laws; (vi) consents or other approvals, waivers or authorizations required for the consummation of the transactions contemplated by this Subscription Agreement that the Company reasonably expects to receive on or prior to the Closing), in each case the failure of which to obtain would not be reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) The Company acknowledges and agrees that, notwithstanding anything herein to the contrary, after the Closing the Offered Securities may be pledged by Subscriber in connection with a bona fide margin agreement, which shall not be deemed to be a transfer, sale or assignment of the Offered Securities hereunder to the extent permitted by applicable securities laws, and Subscriber effecting a pledge of Offered Securities shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Subscription Agreement. The Company hereby agrees to execute and deliver such customary and reasonable documentation as a pledgee of the Offered SEcurities may reasonably request in connection with a pledge of the Offered Securities to such pledgee by Subscriber.

(o) The Company understands that the foregoing representations and warranties shall be deemed material to and have been relied upon by Subscriber.

5. Target Representations and Warranties. Target represents and warrants to Subscriber that:

(a) As of the date hereof, Target is a public limited company duly organized, validly existing and in good standing under the laws of Switzerland. As of each of the Transaction Closing and the Closing, Target will be a public limited company duly organized, validly existing and in good standing under the laws of Switzerland. Target has the corporate power and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

(b) All corporate action required to be taken by Target's Board of Directors and shareholders in order to authorize Target to enter into the Subscription Agreement and to perform its obligations hereunder have been taken by Target's Board of Directors and shareholders. This Subscription Agreement has been duly authorized, executed and delivered by Target and is enforceable against Target in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

(c) Assuming the accuracy of Subscriber's representations and warranties in Section 6, the execution, delivery and performance of this Subscription Agreement and the consummation by Target of the transactions that are the subject of this Subscription Agreement in compliance herewith will not result in (i) a material breach or material violation of any of the terms or provisions of, or constitute a material default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Target or any of its subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, license, lease or any other agreement or instrument to which Target or any of its subsidiaries is a party or by which Target or any of its subsidiaries is bound or to which any of the property or assets of Target is subject, which would have a (A) material adverse effect on the business, properties, financial condition, shareholders' equity or results of operations of Target or (B) materially affect the legal authority or ability of Target to perform in all material respects its obligations under the terms of this Subscription Agreement (each, a "Target Material Adverse Effect"); (ii) any material violation of the provisions of the organizational documents of Target; or (iii) any violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over Target or any of its properties that would have a Target Material Adverse Effect.

(d) Target has not entered into any agreement or arrangement entitling any agent, broker, investment banker, financial advisor or other person to any broker's or finder's fee or any other commission or similar fee in connection with the transactions contemplated by this Subscription Agreement for which Subscriber could become liable.

(e) Other than the Other Subscription Agreements and the Share Exchange Agreement, Target has not entered into any side letter or similar agreement with any Other Subscriber in connection with such Other Subscriber's investment in the Company.

(f) Except for such matters as have not had and would not be reasonably expected to have, individually or in the aggregate, a Target Material Adverse Effect, as of the date hereof, there is no (i) action, suit, claim or other proceeding by or before any governmental or other regulatory or self-regulatory agency, entity or body with authority or jurisdiction over Target pending, or, to the knowledge of Target, threatened in writing against Target or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against Target;

(g) Target is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the execution, delivery and performance of this Subscription Agreement other than (i) filings with the SEC, (ii) filings required by applicable state securities laws, (iii) the filings required in accordance with Section 7, (iv) those required by the Nasdaq (or if applicable, NYSE), (v) filings pursuant to applicable antitrust laws, (vi) consents or other approvals, waivers or authorizations required for the consummation of the transactions contemplated by this Subscription Agreement that Target reasonably expects to receive on or prior to the Closing, in each case the failure of which to obtain would not be reasonably be expected to have, individually or in the aggregate, a Target Material Adverse Effect.

(h) Target understands that the foregoing representations and warranties shall be deemed material to and have been relied upon by Subscriber.

6. Subscriber Representations, Warranties and Covenants. Subscriber represents and warrants to the Company and Target that:

(a) Subscriber is either a U.S. investor or non-U.S. investor as set forth under its name on the signature page hereto, and accordingly represents the applicable additional matters under clause (i) or (ii) below:

(i) Applicable to U.S. investors: At the time Subscriber was offered the Offered Securities, it was, and as of the date hereof, Subscriber is (x) a "qualified institutional buyer" (within the meaning of Rule 144A under the Securities Act) or an "accredited investor" (within the meaning of Rule 501(a) of Regulation D under the Securities Act) as indicated in the questionnaire attached as Exhibit A hereto, and (y) is acquiring the Offered Securities only for his, her or its own account and not for the account of others, and not on behalf of any other account or person or with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act. Subscriber is not an entity formed for the specific purpose of acquiring the Offered Securities.

(ii) Applicable to non-U.S. investors: Subscriber understands that the sale of the Offered Securities is made pursuant to and in reliance upon Regulation S promulgated under the Securities Act ("Regulation S"). Subscriber is not a U.S. Person (as defined in Regulation S), it is acquiring the Offered Securities in an offshore transaction in reliance on Regulation S, and it has received all the information that it considers necessary and appropriate to decide whether to acquire the Offered Securities hereunder outside of the United States. Subscriber is not relying on any statements or representations made in connection with the transactions contemplated hereby other than the representations contained in this Subscription Agreement. Subscriber understands and agrees that Offered Securities sold pursuant to Regulation S may be subject to restrictions thereunder, including compliance with the distribution compliance period provisions therein.

(b) Subscriber understands that the Units are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Offered Securities delivered at the Closing will not have been registered under the Securities Act. Subscriber understands that the Offered Securities may not be resold, transferred, pledged (except in ordinary course prime brokerage relationships to the extent permitted by applicable law) or otherwise disposed of by Subscriber absent an effective registration statement under the Securities Act except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii) in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any certificates (if any) or any book-entry shares representing the Offered Securities delivered at the Closing shall contain a legend or restrictive notation to such effect. Subscriber acknowledges that the Offered Securities will not immediately be eligible for resale pursuant to Rule 144A promulgated under the Securities Act. Subscriber understands and agrees that the Offered Securities, until registered under an effective registration statement, will be subject to transfer restrictions and, as a result of these transfer restrictions, Subscriber may not be able to readily resell the Offered Securities and may be required to bear the financial risk of an investment in the Offered Securities for an indefinite period of time. Subscriber understands that it has been advised to consult legal counsel prior to making any offer, resale, pledge or transfer of any of the Offered Securities.

(c) Subscriber understands and agrees that Subscriber is purchasing Shares directly from the Company. Subscriber further acknowledges that, other than those representations, warranties, covenants and agreements of the Company and Target included in this Subscription Agreement, there have been no representations, warranties, covenants and agreements made to Subscriber by the Company, Target, or any of their respective officers or directors or other Representatives, expressly or by implication. Except for the representations, warranties and agreements of the Company and Target expressly set forth in this Subscription Agreement, Subscriber is relying exclusively on its own sources of information, investment analysis and due diligence (including professional advice it deems appropriate) with respect to the Transaction, the Offering and the business, condition (financial and otherwise), management, operations, properties and prospects of the Company and the Target, including all business, legal, regulatory, accounting, credit and tax matters.

(d) Subscriber's acquisition and holding of the Offered Securities will not constitute or result in a non-exempt prohibited transaction under Section 406 of the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), or any applicable similar law.

(e) Subscriber acknowledges and agrees that Subscriber has received such information as Subscriber deems necessary in order to make an investment decision with respect to the Offered Securities. Without limiting the generality of the foregoing, Subscriber acknowledges that, it has received and reviewed the following items (collectively, the "Disclosure Documents"): (i) each SEC Report through the date of this Subscription Agreement, and (ii) the Share Exchange Agreement, a copy of which will be filed by the Company with the SEC. Subscriber understands the significant extent to which certain of the disclosures contained in items (i) and (ii) above shall not apply following the Transaction Closing. Subscriber represents and agrees that Subscriber and Subscriber's professional advisor(s), if any, have had the full opportunity to ask the Company's and Target's management questions, receive such answers and obtain such information as Subscriber and such Subscriber's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Offered Securities. Subscriber has conducted its own investigation of the Company, the Target, and the Offered Securities, and Subscriber has made its own assessment and have satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Offered Securities. Subscriber acknowledges that Subscriber shall be responsible for any of Subscriber's tax liabilities that may arise as a result of the transactions contemplated by this Subscription Agreement. Subscriber acknowledges that it has reviewed the documents made available to Subscriber by the Company and the Target. Subscriber further acknowledges that the information contained in the Disclosure Documents is subject to change, and that any changes to the information contained in the Disclosure Documents, including any changes based on updated information or changes in terms of the Transaction, shall in no way affect Subscriber's obligation to purchase the Offered Securities hereunder, except as otherwise provided herein. Subscriber acknowledges and agrees that (i) Subscriber has not relied on any statements or other information provided by the Placement Agent or any affiliates of the Placement Agent with respect to its decision to invest in the Offered Securities, including information related to the Company, the Target, the Offered Securities and the offer and sale of the Offered Securities, (ii) neither the Placement Agent, nor any affiliate of the Placement Agent, has made or will make any representation or warranty, whether express or implied, of any kind or character and has not provided Subscriber with any information or advice with respect to the Offered Securities, nor is such information or advice necessary or desired, (iii) the Placement Agent will not have any responsibility with respect to (x) any representations, warranties or agreements made by any person or entity under or in connection with the Transaction or the Offering or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (y) the business, condition (financial or otherwise), operations, properties or prospects of, or any other matter concerning the Company, the Target, the Transaction or the Offering, and (iv) neither the Placement Agent, nor any affiliate of the Placement Agent, has prepared any disclosure or offering document or projection in connection with the offer and sale of the Offered Securities. Neither the Placement Agent, nor any affiliate of the Placement Agent, has made or makes any representation as to the Company, the Target, or the quality or value of the Offered Securities and the Placement Agent and its affiliates may have acquired non-public information with respect to the Company which Subscriber agrees need not be provided to it. In connection with the issuance of the Offered Securities to Subscriber, neither the Placement Agent, nor any affiliate of the Placement Agent, has acted as a financial advisor or fiduciary to Subscriber. Subscriber agrees that Placement Agent shall not be liable to the Subscriber for any action heretofore or hereafter taken or omitted to be taken by the Placement Agent in connection with the Subscriber's purchase of the Offered Securities.

(f) Subscriber became aware of this Offering of the Offered Securities solely by means of direct contact between Subscriber and the Company, the Target, the Placement Agent or a representative of the Company, the Target, or the Placement Agent, and the Offered Securities were offered to Subscriber solely by direct contact between Subscriber and the Company, the Target, the Placement Agent or a representative of the Company, the Target, or the Placement Agent. Subscriber acknowledges that the Company represents and warrants that the Offered Securities (i) were not offered by any form of general solicitation or general advertising and (ii) to the Company's knowledge, are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws. Subscriber has a substantive pre-existing relationship with the Company, the Target, or one or more of their respective affiliates or the Placement Agent for this Offering of the Offered Securities. Neither Subscriber, nor any of its directors, officers, employees, agents, shareholders or partners has either directly or indirectly, including through a broker or finder, (i) to its knowledge, engaged in any general solicitation, or (ii) published any advertisement in connection with the Offering.

(g) Subscriber acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Offered Securities, including those set forth in the Disclosure Documents and the SEC Reports. Subscriber is able to fend for itself in the transactions contemplated herein and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Offered Securities, and Subscriber has sought such accounting, legal and tax advice as Subscriber has considered necessary to make an informed investment decision. Subscriber (i) is a sophisticated investor, experienced in investing in private placement transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and (ii) has exercised independent judgment in evaluating its participation in the purchase of the Offered Securities. Subscriber has determined based on its own independent review and such professional advice as it deems appropriate that its purchase of the Offered Securities and participation in the Offering (i) are fully consistent with its financial needs, objectives and condition, (ii) comply and are fully consistent with all investment policies, guidelines and other restrictions applicable to Subscriber, (iii) have been duly authorized and approved by all necessary action, (iv) do not and will not violate or constitute a default under its charter, by-laws or other constituent document or under any law, rule, regulation, agreement or other obligation by which Subscriber is bound and (v) are a fit, proper and suitable investment for Subscriber, notwithstanding the substantial risks inherent in investing in or holding the Offered Securities.

(h) Alone, or together with any professional advisor(s), Subscriber has adequately analyzed and fully considered the risks of an investment in the Offered Securities and determined that the Offered Securities are a suitable investment for Subscriber and that Subscriber is able at this time and in the foreseeable future to bear the economic risk of a total loss of Subscriber's investment in the Company. Subscriber acknowledges specifically that a possibility of total loss exists.

(i) In making its decision to purchase the Offered Securities, Subscriber has relied solely upon independent investigation made by Subscriber and the representations and warranties of the Company expressly set forth in Section 4 hereof and of Target expressly set forth in Section 5 hereof. Without limiting the generality of the foregoing, Subscriber has not relied on any statements or other information provided by the Placement Agent concerning the Company, Target, or the Offered Securities or the offer and sale of the Offered Securities. Subscriber acknowledges and agrees that Subscriber has (i) received, reviewed and understood the offering materials made available to Subscriber in connection with the Offering, (ii) had access to, and an adequate opportunity to review, financial and other information as Subscriber deems necessary in order to make an investment decision with respect to the Offered Securities, (iii) had the opportunity to ask questions of and receive answers from the Company and Target directly, and (iv) conducted and completed Subscriber's own independent due diligence with respect to the Transaction; provided, that neither the due diligence investigation conducted by Subscriber in connection with making its decision to acquire the Offered Securities nor any representations and warranties made by Subscriber herein shall modify, amend or affect Subscriber's right to rely on the truth, accuracy and completeness of the Company's or Target's representations and warranties contained herein.

(j) Subscriber understands and agrees that no federal or state agency has passed upon or endorsed the merits of this Offering of the Offered Securities or made any findings or determination as to the fairness of this investment or the accuracy or adequacy of the Disclosure Documents.

(k) If an entity, Subscriber has been duly formed or incorporated and is validly existing in good standing under the laws of its jurisdiction of incorporation or formation. Subscriber has the power and authority to enter into, deliver and perform Subscriber's obligations under this Subscription Agreement.

(l) The execution, delivery and performance by Subscriber of this Subscription Agreement are within the powers of Subscriber, have been duly authorized and will not constitute or result in a breach or default under or conflict with any law, statute, rule or regulation applicable to Subscriber, any order, ruling or regulation of any court or other tribunal or of any governmental commission or agency, or any agreement or other undertaking, to which Subscriber is a party or by which Subscriber is bound, and, if Subscriber is not an individual, will not violate any provisions of Subscriber's organizational documents. The signature on this Subscription Agreement is genuine, and the signatory, if Subscriber is an individual, has legal competence and capacity to execute the same or, if Subscriber is not an individual the signatory has been duly authorized to execute the same, and this Subscription Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms.

(m) Subscriber is not (i) a person named on the List of Specially Designated Nationals and Blocked Persons administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or in any Executive Order issued by the President of the United States and administered by OFAC ("OFAC List"), owned or controlled by, or acting on behalf of, a person, that is named on an OFAC List, or a person prohibited by any OFAC sanctions program, (ii) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, (iii) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank or (iv) organized, incorporated, established, located, resident or born in, or a citizen, national, or the government, including any political subdivision, agency, or instrumentality thereof, of, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, or any other country or territory embargoed or subject to substantial trade restrictions by the United States. Subscriber agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Subscriber is permitted to do so under applicable law. If Subscriber is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.), as amended by the USA PATRIOT Act of 2001, and its implementing regulations (collectively, the "BSA/PATRIOT Act"), Subscriber maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. To the extent required, it maintains policies and procedures reasonably designed for the screening of its investors against the OFAC sanctions programs, including the OFAC List. To the extent required, it maintains policies and procedures reasonably designed to ensure that the funds held by Subscriber and used to purchase the Offered Securities were legally derived.

(n) Subscriber agrees and undertakes to provide such information as is reasonably requested by the Placement Agent to satisfy such Placement Agent's obligations under any applicable "know your customer" and/or anti-money laundering rules and regulations, including the BSA/PATRIOT Act and/or the "Customer Due Diligence Rule" (31 C.F.R. 1010.230).

(o) Neither Subscriber, nor, to the extent it has them, any of its equity holders, managers, general or limited partners, directors, affiliates or executive officers (collectively with Subscriber, the "Covered Persons"), are subject to any of the "Bad Actor" disqualifications described in Rule 506(d) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). Subscriber has exercised reasonable care to determine whether any Covered Person is subject to a Disqualification Event. The acquisition of Shares by Subscriber will not subject the Company or Target to any Disqualification Event.

(p) No disclosure or offering document has been prepared by the Placement Agent in connection with the offer and sale of the Offered Securities. Subscriber agrees that neither Placement Agent, nor any of its members, directors, officers, employees, representatives or controlling persons have made an independent investigation with respect to the Company, the Target, or the Offered Securities or the accuracy, completeness or adequacy of any information supplied to Subscriber by or on behalf of the Company or Target. In connection with the issue and purchase of the Offered Securities, the Placement Agent has not acted as Subscriber's financial advisor or fiduciary. Subscriber acknowledges that such information was prepared without the participation of the Placement Agent, and the Placement Agent assumes no responsibility for independent verification of, or the accuracy or completeness of, such information.

(q) Subscriber acknowledges its obligations under applicable securities laws with respect to the treatment of non-public information relating to the Company and Target.

(r) Subscriber has, and on each date any portion of the Aggregate Purchase Price would be required to be funded to the Company pursuant to this Subscription Agreement will have, sufficient immediately available funds to pay the Aggregate Purchase Price.

(s) Subscriber is not currently (and at all times through Closing will refrain from being or becoming) a member of a "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) acting for the purpose of acquiring, holding, voting or disposing of equity securities of the Company (within the meaning of Rule 13d-5(b)(1) under the Exchange Act).

(t) If Subscriber is an employee benefit plan that is subject to Title I of ERISA, a plan, an individual retirement account or other arrangement that is subject to Section 4975 of the Code, or an employee benefit plan that is a governmental plan (as defined in Section 3(32) of ERISA), a church plan (as defined in Section 3(33) of ERISA), a non-U.S. plan (as described in Section 4(b)(4) of ERISA) or other plan that is not subject to the foregoing but may be subject to provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code, or an entity whose underlying assets are considered to include "plan assets" of any such plan, account or arrangement (each, a "Plan") subject to the fiduciary or prohibited transaction provisions of ERISA or Section 4975 of the Code, Subscriber represents and warrants that (i) neither the Company, nor any of its respective affiliates has acted as the Plan's fiduciary, or has been relied on for advice, with respect to its decision to acquire and hold the Offered Securities, and none of the Company or any of its respective affiliates shall at any time be relied upon as the Plan's fiduciary with respect to any decision to acquire, continue to hold or transfer the Offered Securities and (ii) the acquisition and holding of the Offered Securities.

(u) Subscriber hereby acknowledges and agrees that it will not, and will cause each person acting at Subscriber's direction or pursuant to any understanding with Subscriber to not, directly or indirectly offer, sell, pledge, contract to sell or sell any option to purchase, or engage in hedging activities or execute any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act, in each case that result in Subscriber having a net short cash position in respect of the Company Shares until the Closing (or such earlier termination of this Subscription Agreement in accordance with its terms). For the avoidance of doubt, nothing contained herein shall prohibit Subscriber from (i) any purchase of securities by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates in an open market transaction after the execution of this Subscription Agreement, or (ii) any sale (including the exercise of any redemption right) of securities of the Company (A) held by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates prior to the execution of this Subscription Agreement or (B) purchased by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates in an open market transaction after the execution of this Subscription Agreement. Notwithstanding the foregoing, (x) nothing herein shall prohibit other entities under common management with Subscriber that have no knowledge of this Subscription Agreement or of Subscriber's participation in the Offering or the Transaction (including Subscriber's controlled affiliates and/or affiliates) from entering into any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act and (y) if Subscriber is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Subscriber's assets and the portfolio managers have no knowledge of the investment decisions made by the portfolio managers managing other portions of such Subscriber's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Offered Securities covered by this Subscription Agreement.

(v) Subscriber understands that the foregoing representations and warranties shall be deemed material to and have been relied upon by the Company and Target.

7. Registration Rights.

(a) The Company agrees that, within thirty (30) calendar days after the Transaction Closing (the "Filing Deadline"), the Company will file with the SEC (at the Company's sole cost and expense) a registration statement (the "Registration Statement") registering the resale of the Offered Securities, and the Company Shares underlying the Offered Securities. Additionally, the Company agrees that, within thirty (30) calendar days after the Measurement Period, the Company will amend the Registration Statement or file a new Registration Statement, as appropriate, registering the resale of the Make-Whole Shares (all such securities to be registered for resale for the benefit of the Subscriber pursuant to this Section 7(a), collectively, the "Registrable Securities"), and the Company shall use its commercially reasonable efforts to have the applicable Registration Statements declared effective as soon as practicable after the filing thereof. The Company agrees that the Company will use its commercially reasonable efforts to cause such Registration Statement or another registration statement (which may be a "shelf" registration statement) to remain effective with respect to the Registrable Securities until the earlier of (i) the date on which the Registrable Securities cease to be outstanding, (ii) the date on which Subscriber ceases to hold the Registrable Securities covered by such Registration Statement, or (iii) on the first date on which Subscriber can sell all of its Shares (or shares received in exchange therefor) under Rule 144 promulgated under the Securities Act ("Rule 144") without limitation as to the manner of sale or the amount of such securities that may be sold. Subscriber agrees to disclose its beneficial ownership, as determined in accordance with Rule 13d-3 of the Exchange Act, of the Registrable Securities to the Company (or its successor) upon request to assist the Company in making the determination described above. The Company's obligations to include the Registrable Securities in the Registration Statement are contingent upon Subscriber furnishing in writing to the Company such information regarding Subscriber, the securities of the Company held by Subscriber and the intended method of disposition of the Registrable Securities as shall be reasonably requested by the Company to effect the registration of the Registrable Securities, and shall execute such documents in connection with such registration as the Company may reasonably request that are customary of a selling stockholder in similar situations. If the SEC prevents the Company from including any or all of the Registrable Securities proposed to be registered for resale under the Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Company's securities by the applicable shareholders or otherwise, (i) such Registration Statement shall register for resale such number of Company securities which is equal to the maximum number of Company securities as is permitted by the SEC and (ii) the number of Company securities to be registered for each selling shareholder named in the Registration Statement shall be reduced pro rata among all such selling shareholders and as promptly as practicable after being permitted to register additional Registrable Securities under Rule 415 under the Securities Act, the Company shall file a new Registration Statement to register such Shares not included in the initial Registration Statement and cause such Registration Statement to become effective as promptly as practicable consistent with the terms of this Section 7. The Company will provide a draft of the Registration Statement to Subscriber for review reasonably in advance of filing the Registration Statement. In no event shall Subscriber be identified as a statutory underwriter in the Registration Statement unless requested by the SEC; provided, that if the SEC requests that Subscriber be identified as a statutory underwriter in the Registration Statement, Subscriber will have an opportunity to withdraw from the Registration Statement. For purposes of clarification, any failure by the Company to file the Registration Statement by the Filing Deadline shall not otherwise relieve the Company of its obligations to file the Registration Statement or effect the registration of the Registrable Securities set forth in this Section 7. For as long as Subscriber holds the Registrable Securities issued pursuant to this Subscription Agreement, the Company will (A) make and keep public information available, as those terms are understood and defined in Rule 144, (B) file in a timely manner all reports and other documents with the SEC required under the Exchange Act, as long as the Company remains subject to such requirements, and (C) provide all customary and reasonable cooperation necessary, in each case, to enable Subscriber to resell the Registrable Securities pursuant to the Registration Statement or Rule 144 (when Rule 144 becomes available to Subscriber), as applicable.

(b) The Company shall, at its sole expense, advise Subscriber within five (5) business days: (i) when a Registration Statement or any amendment thereto has been filed with the SEC and when a Registration Statement or any post-effective amendment thereto has become effective; (ii) after it shall have received notice or obtained knowledge thereof, of the issuance by the SEC of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose; (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and (iv) subject to the provisions in this Subscription Agreement, of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus so that, as of such date, the statements therein do not include any untrue statements of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading. Upon the occurrence of any event contemplated in the foregoing clause (iv), except for such times as the Company is permitted hereunder to suspend, and has suspended, the use of a prospectus forming part of a Registration Statement, the Company shall use its commercially reasonable efforts to as soon as reasonably practicable prepare a post-effective amendment to such Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) The Company may delay filing or suspend the use of any such registration statement if it determines that in order for the registration statement to not contain a material misstatement or omission, an amendment thereto would be needed, or if such filing or use could materially affect a bona fide business or financing transaction of the Company or would require premature disclosure of information that could materially adversely affect the Company (each such circumstance, a "Suspension Event"); provided, that the Company may not delay or suspend a Registration Statement on more than two (2) occasions or for more than ninety (90) consecutive calendar days, or more than one hundred fifty (150) total calendar days, in each case during any twelve (12) month period. Upon receipt of any written notice from the Company of the happening of any Suspension Event during the period that a Registration Statement is effective or if as a result of a Suspension Event a Registration Statement or related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made (in the case of the prospectus) not misleading, Subscriber agrees that it will (i) immediately discontinue offers and sales of the Registrable Securities under such Registration Statement until Subscriber receives (A) (x) copies of a supplemental or amended prospectus that corrects the misstatement(s) or omission(s) referred to above and (y) notice that any post-effective amendment has become effective or (B) notice from the Company that it may resume such offers and sales, and (ii) maintain the confidentiality of any information included in such written notice delivered by the Company unless otherwise required by applicable law. If so directed by the Company, Subscriber will deliver to the Company or destroy all copies of the prospectus covering the Registrable Securities in Subscriber's possession; provided, however, that this obligation to deliver or destroy all copies of the prospectus covering the Registrable Securities shall not apply to (i) the extent Subscriber is required to retain a copy of such prospectus (A) in order to comply with applicable legal, regulatory, self-regulatory or professional requirements or (B) in accordance with a bona fide pre-existing document retention policy or (ii) copies stored electronically on archival servers as a result of automatic data back-up.

(d) From and after the Closing, the Company agrees to indemnify and hold Subscriber, each person, if any, who controls Subscriber within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of Subscriber within the meaning of Rule 405 under the Securities Act (collectively, the "Subscriber Indemnified Parties"), harmless against any and all losses, claims, damages and liabilities (including any reasonable out-of-pocket legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (collectively, "Losses") incurred by Subscriber Indemnified Parties directly that are (i) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any other registration statement which covers the Registrable Securities (including, in each case, the prospectus contained therein) or any amendment thereof (including the prospectus contained therein) or (ii) caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made), not misleading, except, in the cases of both (i) and (ii), to the extent the same are caused by or contained in any information or affidavit so furnished in writing to the Company by Subscriber for use therein. Notwithstanding the forgoing, the Company's indemnification obligations shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned).

(e) From and after the Closing, Subscriber agrees to, severally and not jointly with any Other Subscriber in the Offering contemplated hereby or any other selling shareholders using the applicable registration statement, indemnify and hold the Company and the officers, employees, directors, partners, members, attorneys and agents of the Company each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each affiliate of the Company within the meaning of Rule 405 under the Securities Act (collectively, the "Company Indemnified Parties"), harmless against any and all Losses incurred by the Company Indemnified Parties directly that are caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any other registration statement which covers the Offered Securities (including, in each case, the prospectus contained therein) or any amendment thereof (including the prospectus contained therein) or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made), not misleading, to the extent the same are caused by or contained in any information or affidavit so furnished in writing to the Company by Subscriber expressly for use therein. In no event shall the liability of Subscriber under this Section 7(e) be greater in amount than the dollar amount of the net proceeds received by Subscriber upon the sale of the Offered Securities giving rise to such indemnification obligation. Notwithstanding the forgoing, Subscriber's indemnification obligations shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the prior written consent of Subscriber (which consent shall not be unreasonably withheld, delayed or conditioned).

8. Termination. This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of: (a) the mutual written agreement of each of the parties hereto and the Target to terminate this Subscription Agreement; (b) such date and time as the Share Exchange Agreement is terminated in accordance with its terms; or (c) written notice by either party to the other party to terminate this Subscription Agreement if the transactions contemplated by this Subscription Agreement are not consummated on or prior to January 1, 2025; *provided* that (i) nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from such breach, and (ii) the provisions of Sections 8 through 12 of this Subscription Agreement will survive any termination of this Subscription Agreement and continue indefinitely. The Company shall cause Subscriber to be notified of the termination of the Share Exchange Agreement promptly after the termination of such agreement. Upon the termination of this Subscription Agreement in accordance with this Section 8, any monies paid by Subscriber to the Company for the Aggregate Purchase Price hereunder shall be promptly returned to Subscriber.

9. Make-Whole.

(a) If (x) the Issuer VWAP is less than the Purchase Price, and (y) as of the date that is two business days after the end of the Measurement Period Subscriber continues to own, of record or in street name, any Company Shares included in the Units acquired by Subscriber in the Subscription (such Company Shares then held by Subscriber, the "Held Shares"), then, on such second business day after the end of the Measurement Period, the Issuer shall cause to be issued to Subscriber a number of additional Company Shares equal to (a) (i) the Purchase Price *minus* the Issuer VWAP *multiplied by* (ii) the number of Held Shares *divided by* (b) the Issuer VWAP, rounded down to the nearest whole share.

(b) For the avoidance of doubt, if (a) the Issuer VWAP is equal to or greater than the Purchase Price or (b) as of the date that is two business days after the end of the Measurement Period, Subscriber does not own, of record or in street name, any Company Shares (excluding, for the avoidance of doubt, any Company Shares beneficially owned through any Warrants or any other convertible or exercisable equity security of the Company) acquired in the Subscription, in no event shall the Issuer be obligated to issue any Make-Whole Shares to Subscriber.

(c) For purposes hereof:

(i) "Issuer VWAP" means the average of the daily volume-weighted average prices for the Company Shares on Nasdaq as reported on Bloomberg, for the period from the scheduled open of trading to the scheduled close of trading, or, if not reported thereby, as reported by any other authoritative source, for each of the complete trading days during the period that is two hundred seventy (270) calendar days following the Closing Date (such period, the "Measurement Period").

(ii) "Make-Whole Shares" means the Company Shares (if any) to be transferred to Subscriber in accordance with Section 9(a) herein.

10. Miscellaneous.

(a) Neither this Subscription Agreement nor any rights or obligations that may accrue to Subscriber hereunder (other than the Offered Securities acquired hereunder, if any, subject to applicable securities laws) may be transferred or assigned by Subscriber without the prior written consent of the Company and Target, and any purported transfer or assignment without such consent shall be null and void ab initio.

(b) The Company may request from Subscriber such additional information as the Company may reasonably deem necessary to evaluate the eligibility of Subscriber to acquire the Offered Securities, and Subscriber shall provide such information to the Company promptly upon such request, it being understood by Subscriber that the Company may without any liability hereunder reject Subscriber's subscription prior to the Closing Date in the event Subscriber fails to provide such additional information requested by the Company to evaluate Subscriber's eligibility or the Company determines that Subscriber is not eligible. On or prior to the Closing Date, the Company and Subscriber shall execute and deliver such additional documents and take such additional actions as the parties reasonably may deem to be practical and necessary in order to consummate the subscription as contemplated by this Subscription Agreement.

(c) Subscriber acknowledges that the Company, Target, the Placement Agent and others will rely on the acknowledgments, understandings, agreements, representations and warranties of Subscriber contained in this Subscription Agreement as if they were made directly to them. Prior to the Closing, Subscriber agrees to promptly notify the Company, Target and the Placement Agent if any of the acknowledgments, understandings, agreements, representations and warranties set forth herein are no longer accurate such that the conditions set forth in Sections 3(b)(i) and 3(b)(ii) would not be satisfied as of the Closing. Subscriber agrees that the purchase by Subscriber of Shares from the Company will constitute a reaffirmation of the acknowledgments, understandings, agreements, representations and warranties herein (as modified by any such notice) by Subscriber as of the time of such purchase. Subscriber acknowledges and agrees that each of the Placement Agent and the Target is a third-party beneficiary of the representations, warranties and covenants of Subscriber contained in Section 6 of this Subscription Agreement, and that the Target is otherwise an express third party beneficiary of this Subscription Agreement, entitled to enforce the terms hereof against Subscriber as if it were an original party hereto. Except as expressly set forth herein, this Subscription Agreement shall not confer any rights or remedies upon any person other than the parties hereto, and their respective successor and assigns.

(d) Each of the Company, the Target, and the Placement Agent is entitled to rely upon this Subscription Agreement and is irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. Subscriber shall not issue any press release or make any other similar public statement with respect to the transactions contemplated hereby without the prior written consent of the Company and Target (such consent not to be unreasonably withheld or delayed).

(e) All the agreements, representations and warranties made by each party hereto in this Subscription Agreement shall survive the Closing.

(f) This Subscription Agreement may not be amended, modified, waived or terminated except by an instrument in writing, signed by the party against whom enforcement of such modification, waiver, or termination is sought; provided, however, that no modification or waiver by the Company of the provisions of this Subscription Agreement prior to the Closing shall be effective without the prior written consent of the Target (other than modifications or waivers that are solely ministerial in nature or otherwise immaterial and do not affect any economic or any other material term of this Subscription Agreement). No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or other exercise of any right, power or privilege hereunder.

(g) This Subscription Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof (other than any confidentiality agreement entered into by the Company and Subscriber in connection with the Offering).

(h) This Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns.

(i) If any provision of this Subscription Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect. Upon such determination that any provision is invalid, illegal or unenforceable, the parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision.

(j) This Subscription Agreement may be executed in one or more counterparts (including by facsimile or electronic mail or in .pdf) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.

(k) The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled at law, in equity, in contract, in tort or otherwise.

(l) Subscriber shall pay all of its own expenses in connection with this Subscription Agreement and the transactions contemplated herein.

(m) Subscriber hereby consents to the publication and disclosure in any press release issued by the Company or Form 8-K filed by the Company with the SEC in connection with the execution and delivery of the Share Exchange Agreement or this Subscription Agreement and the filing of any related documentation with the SEC (and, as and to the extent otherwise required by the federal securities laws or the SEC or any other securities authorities, any other documents or communications provided by the Company to any governmental authority or to security holders of the Company) of Subscriber's identity and beneficial ownership of Shares and the nature of Subscriber's commitments, arrangements and understandings under and relating to this Subscription Agreement and, if deemed appropriate by the Company, a copy of this Subscription Agreement or the form hereof. Subscriber will promptly provide any information reasonably requested by the Company for any regulatory application or filing made or approval sought in connection with the Transaction or the Closing (including filings with the SEC).

(n) This Subscription Agreement, and all actions arising out of or in connection with this Subscription Agreement, shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles relating to conflict of laws that would result in the application of the laws of any other jurisdiction. Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the state and federal courts seated in New York County, New York (and any appellate courts thereof) in any action or proceeding arising out of or relating to this Subscription Agreement, and each of the parties hereby irrevocably and unconditionally (a) agrees not to commence any such action or proceeding except in such courts, (b) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court, and (d) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party irrevocably consents to the service of the summons and complaint and any other process in any other proceeding relating to the transactions contemplated by this Subscription Agreement, on behalf of itself, or its property, by personal delivery of copies of such process to such party at the applicable address set forth in Section 10(o). Nothing in this Section 10(n) shall affect the right of any party to serve legal process in any other manner permitted by law. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, DISPUTE, CLAIM, LEGAL ACTION OR OTHER LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(o) All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered by facsimile or email, with affirmative confirmation of receipt, (iii) one business day after being sent, if sent by reputable, internationally recognized overnight courier service or (iv) three (3) business days after being mailed, if sent by registered or certified mail, prepaid and return receipt requested, in each case to the applicable party at the following addresses (or at such other address for a party as shall be specified by like notice):

If to the Company, to: Blue Water Biotech, Inc. 201 E. Fifth Street, Suite 1900 Cincinnati, OH 45202 Attn: Neil Campbell, Chief Executive Officer Telephone No.: (513) 620-4101 Email: ncampbell@bwbioinc.com	*with a copy (which shall not constitute notice) to:* Ellenoff Grossman & Schole LLP 1345 Avenue of the Americas, 11th Floor New York, New York 10105 Attn: Barry I. Grossman, Esq. Telephone No.: (212) 370-1300 Email: bigrossman@egsllp.com
If to Target, to: Proteomedix AG Wagistrasse 23 8952 Schlieren Switzerland Attn: Ralph Schiess, CEO Telephone No.: +41 44 733 40 90 E-mail: schiess@proteomedix.com	*with a copy (which shall not constitute notice) to:* Nelson Mullins Riley & Scarborough LLP One Financial Center Boston, MA 02111 Attn: Benjamin M. Hron Telephone No.: (617) 217-4607 E-mail: ben.hron@nelsonmullins.com
Notice to Subscriber shall be given to the address underneath Subscriber's name on the signature page hereto.	

(p) The headings set forth in this Subscription Agreement are for convenience of reference only and shall not be used in interpreting this Subscription Agreement. In this Subscription Agreement, unless the context otherwise requires: (i) whenever required by the context, any pronoun used in this Subscription Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; and (iii) the words "herein", "hereto" and "hereby" and other words of similar import in this Subscription Agreement shall be deemed in each case to refer to this Subscription Agreement as a whole and not to any particular portion of this Subscription Agreement. As used in this Subscription Agreement, the term: (x) "business day" shall mean any day other than a Saturday, Sunday or a legal holiday on which commercial banking institutions in New York, New York are authorized to close for business (excluding as a result of "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems, including for wire transfers, of commercially banking institutions in New York, New York are generally open for use by customers on such day); (y) "person" shall refer to any individual, corporation, partnership, trust, limited liability company or other entity or association, including any governmental or regulatory body, whether acting in an individual, fiduciary or any other capacity; and (z) "affiliate" shall mean, with respect to any specified person, any other person or group of persons acting together that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified person (where the term "control" (and any correlative terms) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise).

(q) At Closing, the parties hereto shall execute and deliver such additional documents and take such additional actions as the parties may reasonably deem practical and necessary in order to consummate the Offering as contemplated by this Subscription Agreement.

(r) The legend described in Section 6(b) herein shall be removed and the Company shall issue a certificate (or cause book-entries to be reflected) without such legend to the holder of the Offered Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at The Depository Trust Company ("DTC"), within five (5) business days of written request by Subscriber (i) if such Shares are registered for resale under the Securities Act, and the holder has sold or proposes to sell such Shares pursuant to such registration, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such sale, assignment or transfer of the Offered Securities may be made without registration under the applicable requirements of the Securities Act, or (iii) the Offered Securities can be sold, assigned or transferred without restriction or current public information requirements pursuant to Rule 144, including any volume and manner of sale restrictions which may be applicable to affiliates under Rule 144 and any requirement for the Company to be in compliance with the current public information required under Rule 144(c) or Rule 144(i), as applicable, and in each case, the holder provides the Company with a customary undertaking to effect any sales or other transfers in accordance with the Securities Act. The Company shall be responsible for the fees of the applicable transfer agent, its legal counsel and all DTC fees associated with such issuance, including the fees for causing its counsel to deliver a legal opinion, if any, to the transfer agent in connection with transfers under Rule 144 by Subscriber and Subscriber shall be responsible for all other fees and expenses (including any applicable broker fees or transfer taxes).

11. Non-Reliance and Exculpation. Subscriber acknowledges that it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person other than the statements, representations and warranties of the Company and the Target contained in this Subscription Agreement in making its investment or decision to invest in the Company. Subscriber further acknowledges and agrees that neither (i) any other purchaser pursuant to other subscription agreements entered into in connection with the Offering (including the controlling persons, members, officers, directors, partners, agents, employees or other Representatives of any such other purchaser) nor (ii) the Placement Agents, their respective affiliates or any of their or their affiliates' respective control persons, officers, directors, employees or other Representatives, shall be liable to Subscriber pursuant to this Subscription Agreement for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Offered Securities. Subscriber acknowledges that neither of the Placement Agent, nor their respective Representatives: (a) shall be liable to Subscriber for any improper payment made in accordance with the information provided by the Company; (b) makes any representation or warranty, or has any responsibilities as to the validity, accuracy, value or genuineness of any information, certificates or documentation delivered by or on behalf of the Company pursuant to this Subscription Agreement or the Share Exchange Agreement; or (c) shall be liable to Subscriber (whether in tort, contract or otherwise) (x) for any action taken, suffered or omitted by any of them in good faith and reasonably believed to be authorized or within the discretion or rights or powers conferred upon it by this Subscription Agreement or the Share Exchange Agreement or (y) for anything which any of them may do or refrain from doing in connection with this Subscription Agreement or any the Share Exchange Agreement, except for their gross negligence, willful misconduct or bad faith.

12. Independent Nature of Investment. The obligations of Subscriber under this Subscription Agreement are several and not joint with the obligations of any Other Subscriber under the Other Subscription Agreements, and Subscriber shall not be responsible in any way for the performance of the obligations of any Other Subscriber under the Other Subscription Agreements. The decision of Subscriber to purchase Shares pursuant to this Subscription Agreement has been made by Subscriber independently of any Other Subscriber and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company, the Target, or any of their respective subsidiaries which may have been made or given by any Other Subscriber or by any agent or employee of any Other Subscriber, and neither Subscriber nor any of its agents or employees shall have any liability to any Other Subscriber (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Other Subscription Agreement, and no action taken by Subscriber or Other Subscriber pursuant hereto or thereto, shall be deemed to constitute Subscriber and Other Subscribers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that Subscriber and Other Subscribers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Subscription Agreement and the Other Subscription Agreements. Subscriber acknowledges that no Other Subscriber has acted as agent for Subscriber in connection with making its investment hereunder and no Other Subscriber will be acting as agent of Subscriber in connection with monitoring its investment in the Offered Securities or enforcing its rights under this Subscription Agreement. Subscriber shall be entitled to independently protect and enforce its rights under this Subscription Agreement, and it shall not be necessary for any Other Subscriber to be joined as an additional party in any proceeding for such purpose.

{SIGNATURE PAGES FOLLOW}

IN WITNESS WHEREOF, the parties hereto have caused this Subscription Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Blue Water Biotech, Inc.

By: /s/ Dr. Neill Campbell
Name: Dr. Neil Campbell
Title: CEO

Proteomedix AG

By: /s/ Ralph Schiess
Name: Ralph Schiess
Title: CEO

Name: Christian Brühlmann
Title: CPO

{SUBSCRIBER SIGNATURE PAGE TO THE SUBSCRIPTION AGREEMENT}

IN WITNESS WHEREOF, the undersigned has caused this Subscription Agreement to be duly executed by its authorized signatory as of the date first indicated above.

Name(s) of Subscriber: _____

Signature of Authorized Signatory of Subscriber: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Address for Notice to Subscriber:

_____

_____

_____

Attention: _____

Email: _____

Facsimile No.: _____

Telephone No.: _____

Address for Delivery of Units to Subscriber (if not same as address for notice):

_____

_____

_____

Subscription Amount: $5,000,000

Number of Units: _____

Subscriber status (mark one): ☐ U.S. investor ☐ Non-U.S. investor

EIN Number: _____

Exhibit A
Accredited Investor Questionnaire

Capitalized terms used and not defined in this Exhibit A shall have the meanings given in the Subscription Agreement to which this Exhibit A is attached.

The undersigned represents and warrants that the undersigned is an "accredited investor" (an "Accredited Investor") as such term is defined in Rule 501(a) of Regulation D under the U.S. Securities Act of 1933, as amended (the "Securities Act"), for *one or more* of the reasons specified below (please check all boxes that apply):

_____ (i) A natural person whose net worth, either individually or jointly with such person's spouse or spousal equivalent, at the time of Subscriber's purchase, exceeds $1,000,000;

The term "net worth" means the excess of total assets over total liabilities (including personal and real property, but excluding the estimated fair market value of Subscriber's primary home). For the purposes of calculating joint net worth with the person's spouse or spousal equivalent, joint net worth can be the aggregate net worth of Subscriber and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. There is no requirement that securities be purchased jointly. A spousal equivalent means a cohabitant occupying a relationship generally equivalent to a spouse.

_____ (ii) A natural person who had an individual income in excess of $200,000, or joint income with Subscriber's spouse or spousal equivalent in excess of $300,000, in each of the two most recent years and reasonably expects to reach the same income level in the current year;

In determining individual "income," Subscriber should add to Subscriber's individual taxable adjusted gross income (exclusive of any spousal or spousal equivalent income) any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or Keogh retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

_____ (iii) A director or executive officer of the Company;

_____ (iv) A natural person holding in good standing with one or more professional certifications or designations or other credentials from an accredited educational institution that the U.S. Securities Exchange Commission ("SEC") has designated as qualifying an individual for accredited investor status;

The SEC has designated the General Securities Representative license (Series 7), the Private Securities Offering Representative license (Series 82) and the Licensed Investment Adviser Representative (Series 65) as the initial certifications that qualify for accredited investor status.

_____ (v) A natural person who is a "knowledgeable employee" as defined in Rule 3c-5(a)(4) under the Investment Company Act of 1940 (the "Investment Company Act"), of the issuer of the securities being offered or sold where the issuer would be an investment company, as defined in Section 3 of the Investment Company Act, but for the exclusion provided by either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act;

_____ (vi) A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity;

_____ (vii) A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

_____ (viii) An investment adviser registered pursuant to Section 203 of the Investment Advisers Act of 1940 (the "Investment Advisers Act") or registered pursuant to the laws of a state, or an investment adviser relying on the exemption from registering with the SEC under Section 203(l) or (m) of the Investment Advisers Act;

_____ (ix) An insurance company as defined in Section 2(13) of the Exchange Act;

_____ (x) An investment company registered under the Investment Company Act or a business development company as defined in Section 2(a)(48) of that Act;

_____ (xi) A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

_____ (xii) A Rural Business Investment Company as defined in Section 384A of the Consolidated Farm and Rural Development Act;

_____ (xiii) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state, or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

_____ (xiv) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

_____ (xv) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

_____ (xvi) An organization described in Section 501(c)(3) of the Internal Revenue Code, or a corporation, business trust, partnership, or limited liability company, or any other entity not formed for the specific purpose of acquiring the Securities, with total assets in excess of $5,000,000;

_____ (xvii) A trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the Securities, whose purchase is directed by a sophisticated person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of investing in the Company;

_____ (xviii) A "family office" as defined in Rule 202(a)(11)(G)-1 under the Investment Advisers Act with assets under management in excess of $5,000,000 that is not formed for the specific purpose of acquiring the securities offered and whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment;

_____ (xix) A "family client" as defined in Rule 202(a)(11)(G)-1 under the Investment Advisers Act, of a family office meeting the requirements set forth in (xviii) and whose prospective investment in the issuer is directed by a person from a family office that is capable of evaluating the merits and risks of the prospective investment;

_____ (xx) A "qualified institutional buyer" as defined in Rule 144A under the Securities Act;

_____ (xxi) An entity, of a type not listed above, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000; and/or

_____ (xxii) An entity in which all of the equity owners qualify as an accredited investor under any of the above subparagraphs.

_____ (xxiii) Subscriber does not qualify under any of the investor categories set forth in (i) through (xxi) above.

2.1 Type of Subscriber. Indicate the form of entity of Subscriber:

☐ Individual
☐ Corporation
☐ Revocable Trust
☐ Other Type of Trust (indicate type): _____
☐ Other (indicate form of organization): _____

☐ Limited Partnership
☐ General Partnership
☐ Limited Liability Company

2.2.1 If Subscriber is not an individual, indicate the approximate date Subscriber entity was formed: _____.

2.2.2 If Subscriber is not an individual, **initial** the line below which correctly describes the application of the following statement to Subscriber's situation: Subscriber (x) was not organized or reorganized for the specific purpose of acquiring the Securities and (y) has made investments prior to the date hereof, and each beneficial owner thereof has and will share in the investment in proportion to his or her ownership interest in Subscriber.

_____ True
_____ False

If the "False" line is initialed, each person participating in the entity will be required to fill out a Subscription Agreement.

Subscriber:
Subscriber Name: _____

By: _____
Signatory Name:
Signatory Title:

Date: