



ASX / Media Release

INFORMATION STATEMENT - ACQUISITION BY OMEGAX

Fremont, California and Sydney, Australia; 13 November 2023 – Pivotal Systems Corporation (“Pivotal” or the “Company”) (ASX: PVS), a leading provider of innovative gas flow control (GFC) solutions to the semiconductor industry, attaches a copy of the Information Statement (together with annexures) to be sent to Pivotal shareholders and CDI holders relating to the definitive merger agreement entered into by Pivotal to be acquired by OmegaX, Inc, a California corporation, which was announced earlier today.

THIS RELEASE DATED 13 NOVEMBER 2023 HAS BEEN AUTHORISED FOR LODGEMENT TO ASX BY THE BOARD OF DIRECTORS OF PIVOTAL SYSTEMS.

- ENDS -

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If investors wish to subscribe to Pivotal Systems’ email alert service for ASX Announcements, please follow this [link](#).

About Pivotal Systems Corporation (ASX: PVS)

Pivotal Systems Corporation (ARBN 626 346 325), is a company incorporated in Delaware, USA, whose stockholders have limited liability. Pivotal Systems provides the best-in-class gas flow monitoring and control technology platform for the global semiconductor industry. The Company’s proprietary hardware and software utilizes advanced machine learning to enable preventative diagnostic capability resulting in an order of magnitude increase in fab productivity and capital efficiency for existing and future technology nodes. For more information on Pivotal Systems Corporation, visit <https://www.pivotalsys.com/>.

Notice to U.S. persons: restriction on purchasing CDIs

Pivotal Systems is incorporated in the State of Delaware and its securities have not been registered under the U.S. Securities Act of 1933 or the laws of any state or other jurisdiction in the United States. Trading of Pivotal Systems’ CHES Depositary Interests (“CDIs”) on the Australian Securities Exchange is not subject to the registration requirements of the U.S. Securities Act in reliance on Regulation S under the U.S. Securities Act and a related ‘no action’ letter issued by the U.S. Securities and Exchange Commission to the ASX in 2000. As a result, the CDIs are “restricted securities” (as defined in Rule 144 under the U.S. Securities Act) and may not be sold or otherwise transferred except in transactions exempt from, or not subject to, the registration requirements of the U.S. Securities Act. For instance, U.S. persons who are qualified institutional buyers (“QIBs”, as defined in Rule 144A under the U.S. Securities Act) may purchase CDIs in reliance on the exemption from registration provided by Rule 144A. To enforce the transfer restrictions, the CDIs bear a FOR Financial Product designation on the ASX. This designation restricts CDIs from being purchased by U.S. persons except those who are QIBs. In addition, hedging transactions with regard to the CDIs may only be conducted in compliance with the U.S. Securities Act.

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ACQUISITION OF PIVOTAL SYSTEMS CORPORATION
INFORMATION STATEMENT, CONSENT SOLICITATION,
NOTICE OF APPRAISAL RIGHTS
AND NOTICE OF ACTION BY WRITTEN CONSENT

PIVOTAL SYSTEMS CORPORATION

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This Information Statement, Consent Solicitation, Notice of Appraisal Rights and Notice of Action by Written Consent (this “**Information Statement**”) is being furnished to persons who are stockholders or holders of CHESS Depositary Interests (“**CDIs**”) (together, “**Securityholders**”) of record as of November 16, 2023 of Pivotal Systems Corporation, a Delaware corporation (“**Pivotal**” or the “**Company**”). We hereby announce that on November 10, 2023, the Company entered into an Agreement and Plan of Merger, attached hereto as Annex A (the “**Merger Agreement**”), by and among the Company, OmegaX, Inc., a California corporation (“**Acquiror**”), OmegaX Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Acquiror (“**Merger Sub**”), Anzu RBI Mezzanine Preferred GP LLC (the “**Representative**”), solely in its capacity as the representative of the Company’s Securityholders. The Board of Directors (the “**Board**”) of the Company approved the Merger Agreement and the transactions contemplated thereby on November 10, 2023, and determined that the merger is advisable, reasonable and in the best interests of the Company and its stockholders (“**Company Stockholders**”) and has recommended that the Company Stockholders adopt the Merger Agreement and approve the transactions contemplated thereby. On November 10, 2023, the Company Stockholders holding a sufficient number of shares under the Delaware General Corporation Law (the “**DGCL**”) and the Company’s Twelfth Amended and Restated Certificate of Incorporation, as amended (the “**Company Charter**”), approved and adopted the Merger Agreement pursuant to the Action by Written Consent of Stockholders of the Company in the form attached hereto as Annex B (the “**Stockholder Consent**”). Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Merger Agreement. In light of this approval, the Company is delivering this Information Statement, in part, to give all Company Stockholders notice pursuant to Section 228(e) of the DGCL of such adoption and approval.

The following materials relate to the proposed merger, which is more fully described in the accompanying Information Statement. After you have had an opportunity to review the accompanying materials, if you are a Company Stockholder as at the close of business on the Record Date (being November 16, 2023) (“**Record Date**”), we ask that you sign and return a copy of the Stockholder Written Consent attached to the Information Statement as Annex B (the “**Stockholder Consent**”) as soon as possible. The accompanying Information Statement and exhibits contain important information about your rights as a Company Stockholder. You are urged to read carefully the attached materials.

If you are a holder of CDIs representing underlying shares of Common Stock (“**CDI Holder**”), you are not required to do anything to receive the Merger Consideration. As the Requisite Consent to approve the Merger has already been obtained, subject to the Merger completing, Link Market Services Limited (the Company’s Australian Share Registry and Australian Paying Agent) will pay the aggregate amount of Merger Consideration to which you are entitled for the CDIs you hold, in accordance with the Merger timetable provided further below. If you do not wish to accept the consideration as provided in the Merger

Agreement, you may exercise your appraisal rights following the process further described in this Information Statement. Please read this Information Statement carefully.

In the Merger, each share of the Company's capital stock (including Company CDIs) will be converted into the right to receive cash, without interest, on the terms described in the Merger Agreement. The proposed merger is expected to be completed at or around November 20, 2023. The Merger Agreement and the Merger are further described in "Material Features of the Merger Agreement and the Merger".

This Information Statement also contains important information with respect to your right to seek appraisal under Section 262 of the DGCL. Failure to follow the steps required by Section 262 of the DGCL for perfecting appraisal rights may result in the loss of your appraisal rights, in which event you will be entitled only to receive the Merger consideration with respect to your shares in accordance with the Merger Agreement. A copy of Section 262 of the DGCL is attached hereto as Annex C. Please read this Information Statement carefully.

NOTWITHSTANDING THE RECEIPT OF THE STOCKHOLDER CONSENTS REQUIRED BY APPLICABLE LAW¹, YOUR WRITTEN CONSENT IS IMPORTANT. THE COMPANY BOARD RECOMMENDS THAT EACH COMPANY STOCKHOLDER THAT HAS NOT EXECUTED THE STOCKHOLDER CONSENT PROMPTLY EXECUTE THE SIGNATURE PAGE TO THE STOCKHOLDER CONSENT ENCLOSED HERewith AND RETURN AN EXECUTED COPY TO THE COMPANY'S COUNSEL AT THE ADDRESS BELOW.

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This Information Statement is being sent to Company Securityholders on or about 20 November, 2023.

This Information Statement summarizes the matters contemplated by the Merger Agreement and the Merger, many of which are complex and not easily summarized. Accordingly, you should read this Information Statement and the enclosed annexes, including the Merger Agreement, carefully and in their entirety. There may be important differences between this summary and the annexes.

If you have any questions about the Merger Agreement or the Merger or the other matters described in this Information Statement, please do not hesitate to email or call Ron Warrington at +1 (415) 317-1092 or Tyler Hasting of DLA Piper LLP (US) at tyler.hastings@us.dlapiper.com or +1 (858) 677-1439 or in Australia, Link Market Services on +61 1300 402 422 which will be open for queries on or around the date of dispatch of this Information Statement on 20 November 2023.

¹ The Transaction was approved by stockholders including Anzu Partners, Enterprise Partners, Joe Monkowski and Anzu RBI Mezzanine Preferred LLC (fka Anzu Industrial RBI USA LLC). See section entitled "Interests of Certain Persons in the Merger" for further information.

This Information Statement is being provided to you solely in your capacity as a Securityholder to assist you in your decision whether to provide a written consent in connection with the matters described herein and to provide information about the Transaction approved by the Company's stockholders pursuant to Section 228(e) of the DGCL. In reviewing this Information Statement, you are agreeing not to copy or distribute any part of this Information Statement and not to use it for any purpose other than evaluation of the matters described herein. Your failure to observe these legal restrictions on the use and distribution of this information may give rise to legal consequences.

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- Annex A – Agreement and Plan of Merger
- Annex B – Stockholder Consent
- Annex C – Section 262 of the Delaware General Corporation Law

WE HAVE NOT AUTHORIZED ANYONE TO PROVIDE YOU WITH INFORMATION THAT IS DIFFERENT FROM THAT CONTAINED IN THIS INFORMATION STATEMENT, INCLUDING THE ANNEXES HERETO. WE TAKE NO RESPONSIBILITY FOR, AND CAN PROVIDE NO ASSURANCE AS TO THE RELIABILITY OF, ANY OTHER INFORMATION THAT OTHERS MAY GIVE YOU. THE INFORMATION SET FORTH IN THIS INFORMATION STATEMENT CONCERNING ACQUIROR AND ITS SUBSIDIARIES AND AFFILIATES HAS BEEN FURNISHED BY ACQUIROR AND HAS NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY THE COMPANY. COMPANY SECURITYHOLDERS SHOULD NOT ASSUME THAT THE INFORMATION IN THIS INFORMATION STATEMENT IS ACCURATE AS OF ANY DATE OTHER THAN THE DATE OF THIS INFORMATION STATEMENT.

THE INFORMATION THAT THE COMPANY PROVIDES ITS SECURITYHOLDERS IN THIS INFORMATION STATEMENT IS NOT INTENDED TO BE LEGAL, TAX OR INVESTMENT ADVICE. COMPANY SECURITYHOLDERS SHOULD CONSULT THEIR OWN LEGAL COUNSEL, ACCOUNTANTS AND INVESTMENT ADVISORS AS TO LEGAL, TAX AND OTHER MATTERS CONCERNING THE MERGER, THE SHARES AND THE RELATED MATTERS DESCRIBED IN THIS INFORMATION STATEMENT.

SUMMARY

Parties to the Merger

Company

The Company, Pivotal Systems Corporation, a Delaware corporation headquartered in Fremont, California, designs, develops, manufactures and sells high-performance gas flow controllers. The Company provides high quality gas flow monitoring and control technology platform for the global semiconductor industry. The Company's proprietary hardware and software utilizes advanced machine learning to enable preventative diagnostic capability resulting in an order of magnitude increase in fab productivity and capital efficiency for existing and future technology nodes.

The Company's principal corporate office is located at 48389 Fremont Blvd, Suite 100, Fremont, CA, and its telephone number at that location is (510) 770-9125. The Company's website is <https://www.pivotalsys.com>; however, information contained on the Company's website is *not* a part of this Information Statement. The Company's audited financial statements for the fiscal years ended December 31, 2021 and December 31, 2022 and the six-month period ended June 30, 2023 are not included herewith but are publicly available via its filings with the Australian Securities Exchange (ASX).

Acquiror

OmegaX, Inc. is a California corporation formed on April 26, 2023 ("*Acquiror*"). Acquiror's principal corporate office is located at 20725 Valley Green Drive, Cupertino, CA 95014.

Merger Sub

Merger Sub, OmegaX Merger Sub, Inc., a Delaware corporation, was incorporated on November 6, 2023, and is a wholly-owned subsidiary of Acquiror. Merger Sub's principal corporate office and contact information is the same as that of Acquiror. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated by the Merger and the Merger Agreement.

Representative

In connection with its approval of the Merger, the Merger Agreement and the Transactions, the Stockholder Consent will approve the appointment of Anzu RBI Mezzanine Preferred GP LLC (the "*Representative*") to be the representative for the Company Stockholders in respect of certain matters that may arise after the consummation of the Merger. Representative is General Partner of the Anzu Funds and is affiliated with Anzu RBI (each as defined below).

Overview of the Merger

Pursuant to the Merger Agreement, Acquiror intends to acquire the Company by means of the Merger of Merger Sub with and into the Company, with the Company being the surviving corporation of the Merger and becoming a wholly-owned subsidiary of Acquiror (and, as such, is sometimes hereinafter referred to as the "*Surviving Corporation*").

The proposed Merger is to be effected in accordance with the DGCL and pursuant to a Certificate of Merger to be filed with the Secretary of State of the State of Delaware upon the satisfaction or waiver of the conditions set forth in the Merger Agreement. Upon consummation of the Merger, the separate existence of Merger Sub shall cease and the Company shall continue as the corporation surviving the Merger. As a result of the Merger, each outstanding share of the Company's capital stock and each

outstanding CDI shall be converted into the right to receive cash, without interest, and each outstanding option to acquire shares of the Company's capital stock (each, a "***Company Option***") will be cancelled without consideration, in each case on the terms set forth in the Merger Agreement, which terms are described in "Material Features of the Merger Agreement and the Merger – Treatment of Company Capital Stock". **The Merger is expected to be completed on or about 20 November 2023.**

For a summary of the material provisions of the Merger Agreement and the Merger, see "Material Features of the Merger Agreement and the Merger".

Purchase price

Acquiror has agreed to acquire all of the issued shares in the Company for cash consideration, which values Pivotal at approximately US\$18 million (subject to customary net debt and working capital adjustments).

Under the Transaction, after the repayment of external debt, redemption of the Company's RBI Preferred Stock and payment of transaction expenses and bonuses, Company shareholders and CDI holders will receive A\$0.0001 per share/CDI in cash. In connection with the Transaction, the holder of RBI Preferred Stock has agreed to forego approximately US\$4.3 million to which it otherwise would have been entitled in connection with its redemption of RBI Preferred Stock and repayment of its indebtedness. The price per share/CDI represents a discount of:

- 96.6% to the closing price of Pivotal's CDIs on the day prior to entering into the Merger Agreement;
- 97.1% to the 30 day VWAP of Pivotal's CDIs prior to the date of this announcement;
- 97.4% to the 60 day VWAP of Pivotal's CDIs prior to the date of this announcement.

Consideration of the Merger Agreement by the Company Board

In reaching its decision to approve the Merger and the Merger Agreement, the Company Board identified a number of potential benefits to the Company and the Company Securityholders, including, but not limited to, the following:

- the valuation of the Company, the effective purchase price for each of the classes of Company Stock and other terms and structure of the Merger, the indemnification obligations and other post-closing liability arrangements and limitations to which the Company Securityholders would be subject;
- the fact that the Merger consideration is payable entirely in cash;
- management's view of the Company's current and historical financial condition, results of operation and business;
- in the absence of the Merger, the Board considers that the Company is unlikely to be able to secure any better outcome for shareholders;
- a complete transaction process has been led by a qualified third-party, Needham & Company, from October, 2022 to November 2023 through, which interest was solicited from multiple potential counterparties, multiple letters of interest were received, and the offer from the Acquiror is the superior proposal in the business judgment of the Board; and

- the current and historical volatility and condition of the financial markets, including but not limited to the debt and credit market, and the proposed transaction would make available additional resources to fund required on-going and anticipated future working capital needs for the Company.

The Company Board also identified and considered a number of uncertainties, risks and potentially negative factors in its deliberations concerning the Merger and the Merger Agreement, including:

- the interests that the Company’s executive officers and the Company Board members and their respective affiliates may have with respect to the Merger (see section titled “Interests of Certain Persons in the Merger”); and
- the risks set forth under the caption “Risk Factors”.

The foregoing information and factors considered by the Company Board are not intended to be exhaustive but are believed to include the material factors considered by the Company Board. Given the variety of factors considered by the Board in its evaluation of the Merger, the Board did not find it practicable to, and did not, quantify or otherwise assign relative weights to the specific factors considered in reaching its decision. In addition, individual members of the Board may have given different weight to different factors. After careful and due consideration, the Company Board concluded that, overall, the risks, uncertainties, restrictions and potentially negative factors associated with entering into the Merger Agreement were outweighed by the potential benefits to the Securityholders of the Merger and to support its determination that the Merger is advisable, reasonable and in the best interests of the Company and its stockholders.²

Timetable for the Merger

Date	Event
11 November 2023	Signature of Merger Agreement and shareholder written consent
14 November 2023	Last day for trading Pivotal CDIs on ASX Pivotal CDIs suspended from trading at close of trading
16 November 2023	Record Date for determining participants in the Transaction
20 November 2023	Expected date for completion of merger. Purchase price paid to paying agents on behalf of Pivotal securityholders Removal of Pivotal from the Official List of ASX
20 November 2023	Information Statement dispatched to Pivotal shareholders and CDI holders
23 November 2023	Expected date for payment of purchase price to Pivotal shareholders and CDI holders

² Note that certain of the Directors have interests in the Merger which may differ from other Securityholders. Please see section entitled “Interests of Certain Persons in the Merger” for further information.

The dates in the timetable above are indicative only and may change, subject to any requirements of the ASX, Delaware Corporation Law and any other applicable laws.

FREQUENTLY ASKED QUESTIONS

The following questions and answers, or Q&A, are intended to address some commonly asked questions regarding the Merger. This Q&A may not address all questions that may be important to you as a Company Stockholder or as a CDI Holder. We urge you to read carefully the more detailed information contained elsewhere in this Information Statement, the Annexes, and the materials we refer to in this Information Statement.

Question	Response
Overview	
Why am I receiving this Information Statement?	The Company is providing this Information Statement to inform Company Securityholders that the Merger and the Company's entry into the Merger Agreement have been approved and adopted by the requisite majorities of the Company Securityholders.
What is the Merger?	<p>Pursuant to the Merger Agreement, the Acquiror intends to acquire the Company by means of merging Merger Sub with and into the Company, with the Company being the surviving corporation of the Merger and becoming a wholly-owned subsidiary of Acquiror (i.e. the "Surviving Corporation").</p> <p>The proposed Merger is to be affected in accordance with the Delaware Corporations Law and pursuant to a Certificate of Merger to be filed with the Secretary of State of the State of Delaware upon the satisfaction or waiver of the conditions to the Merger Agreement. Upon consummation of the Merger, the separate existence of the Sub shall cease and the Company shall continue as the corporation surviving the Merger.</p> <p>As a result of the Merger, each outstanding share of Company Common Stock and each outstanding Company CDI shall be converted into the right to receive the Merger consideration in cash, without interest, and each outstanding Company Option will be cancelled without consideration.</p> <p>Trading in Company CDIs will be suspended from official quotation on the ASX from the close of trading on the trading day that is two Business Days before the Closing Date.</p> <p>The Company will also be de-listed on or around November 20, 2023.</p>
What am I being asked to consent to?	<p>If you are a Company Stockholder, notwithstanding that the Merger has already been approved by the requisite majorities of Company Securityholders, Stockholders are being asked to consent to the Merger which will in effect waive any appraisal rights you may have in relation to the Merger. In order to provide your consent, you must sign the attached Stockholder Consent and return it to the Company in accordance with the instructions in this Information Statement. Refer further below for information on appraisal rights.</p> <p>If you are a CDI Holder, you do not need to do, or consent to, anything to receive the Merger Consideration. If you do not wish to accept the</p>

Question	Response
	<p>consideration as provided in the Merger Agreement, you may exercise your appraisal rights following the process further described in this Information Statement.</p>
<p>What is the Merger Agreement and is it binding on me?</p>	<p>The Merger Agreement contains various undertakings by the Company, Acquiror and the Sub relating to the proposed Merger. The material terms of the Merger Agreement are summarised in the section titled “Material Features of the Merger Agreement and the Merger” of the Information Statement and a copy of the Merger Agreement is attached as Annex A. The Merger will only impact the Company Stockholders and CDI Holders invested in the Company if and when all conditions have been satisfied or waived and the Merger and the other transactions contemplated thereby are consummated.</p> <p>If you are a Stockholder or CDI Holder on the Record Date for the Merger, your securities will be cancelled on the Merger being consummated. In exchange, you will receive the Merger Consideration unless you exercise your appraisal rights as described in this Information Statement.</p>
<p>Why is the Company proposing the Merger?</p>	<p>In November 2022, the Company engaged a qualified third-party, Needham & Company to undertake a review of strategic options for the Company including to solicit interest from potential counterparties and receive letters of interest into a potential acquisition or merger of the Company. This process led to the offer from the Acquiror and the Merger Agreement. Given the Company’s financial position and constraints on funding particularly in challenging market conditions, the Company has determined that the Merger Agreement and the transactions contemplated thereby, including, without limitation, the Merger, were advisable and reasonable, and in the best interests of, the Company and the Stockholders (and CDI Holders).</p> <p>Accordingly, the Board recommended approval of the adoption by Company Stockholders (and CDI Holders) of the Merger Agreement and the consummation of the Merger and the other transactions contemplated thereby. Specifically, the Company Board are recommending the approval of the Merger for the following reasons, among others:</p> <ul style="list-style-type: none"> • Management’s view of the Company’s current and historical financial condition, results of operation and business. • As mentioned above, a complete transaction process has been led by a qualified third-party, Needham & Company, and the offer from the Acquiror is the superior proposal in the business judgment of the Board. • All cash consideration delivers certainty and immediate value for your Company Common Stock and Company CDIs (as applicable). • The Merger is subject to only customary Closing conditions. • If the Merger does not proceed, you will continue to be subject to the uncertainties associated with the Company’s business and general market

Question	Response
	risks and, in particular, concerns about the Company's ability to raise sufficient capital to continue in business.
Who is the Acquiror?	OmegaX, Inc. is a California corporation formed on April 26, 2023 ("Acquiror"). Acquiror's principal corporate office is located at 20725 Valley Green Drive, Cupertino, CA 95014.
When do you expect the Merger to be completed?	We expect Closing to occur on November 20, 2023. However, no assurances can be made as to if or when Closing will occur and it is possible that factors outside of our control could require us to complete the Merger at a later time, or not complete it at all. All Closing conditions specified in the Merger Agreement (other than Company Stockholder consent which has already been obtained) must be satisfied or, to the extent permitted, waived prior to the completion of the Merger.
What will happen to the Company as a result of the Merger?	If the Merger is completed (1) the Sub will merge with and into the Company, with the Company continuing as the Surviving Corporation; and (2) Company CDIs will no longer be traded on the ASX and the Company will be removed from the official list of the ASX in accordance with the ASX Listing Rules as soon as practicable following the completion of the Merger.
Merger Consideration	
What will I receive in the Merger?	<p>As a result of the Merger, each Company Common Stock (other than the Depositary Shares and Dissenting Shares) outstanding as of immediately prior to the Effective Time will be converted into the right to receive approximately US\$0.0001 in cash, without interest.</p> <p>Each Company CDI represents 1 Company Common Stock and as a result of the Merger, each Company CDI outstanding as of immediately prior to the Effective Time will be converted into the right to receive A\$0.0001 as described above.</p> <p>If you object to the Merger, you have a right under Delaware law to dissent and seek payment of the fair value of your Shares pursuant to appraisal rights under Delaware law. However, you should note that exercise of such rights is a time consuming and expensive process and there is no guarantee that you will receive a higher amount for your Shares or CDIs than the Merger Consideration.</p>
If the Merger is completed, when can I expect to receive the Merger Consideration?	If the Merger is completed and you are a Company Stockholder (excluding the Depositary), you will receive written instructions, including a Letter of Transmittal that explains how to exchange your Company Common Stock for the Merger Consideration. When you properly return and complete the required documentation described in the written instructions, you will receive from the Paying Agent a payment equal to the aggregate amount of the Merger Consideration to which you are entitled for the Company Common Stock you hold.

Question	Response
	<p>If you hold Company CDIs, you will receive from the Australian share registry a payment equal to the aggregate amount of the Merger Consideration to which you are entitled for the Company CDIs you hold. CDI Holders do not need to complete or submit a Letter of Transmittal. Payments to CDI Holders are expected to be made on 23 November 2023.</p>
<p>What happens if the market price of Company CDIs changes before the Closing of the Merger?</p>	<p>No change will be made to the Merger Consideration if the market price of Company CDIs changes before the Closing of the Merger.</p>
<p>Will the Merger be taxable to me?</p>	<p>The exchange of Company Common Stock or Company CDIs for cash in the Merger generally will be a taxable transaction for U.S. federal income and Australian tax purposes.</p> <p>For further detail regarding general Australian and material U.S. federal income tax consequences of the Merger for certain Company Common Stockholders and CDI Holders, refer to the Section under the heading “CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS” and “CERTAIN MATERIAL AUSTRALIAN TAX CONSIDERATIONS”. The tax treatment may vary depending on the nature and characteristics of the Company Stockholder or CDI Holder and their specific circumstances. Accordingly, Company Stockholders and CDI Holders should seek professional tax advice in relation to their particular circumstances, including tax consequences of the Merger arising under other federal, state, local, foreign, or other tax laws.</p> <p><i>Tax matters can be complicated and the tax consequences of the Merger to you will depend on the facts of your own situation. We recommend that you consult your own tax advisor regarding the tax consequences of the Merger to you.</i></p>
<p>What will holders of Company Options receive in the Merger?</p>	<p>On and from the Effective Time, all Company Options will be cancelled for no consideration in accordance with the terms of the equity incentive plans under which the Company Options were issued.</p>
<p>Will the Merger Consideration be adjusted?</p>	<p>The Merger Consideration will be adjusted upwards or downwards post-Closing based on the final Net Working Adjustment, Effective Time Cash, Transaction Expenses, Third Party Loans, and Company Indebtedness. However, this will not impact the amount received by Stockholders or CDI Holders and will only impact the holders of promissory notes and/or RBI Preferred Stock.</p>
<p>Assessment of the Merger</p>	

Question	Response
Are there any conditions to the Merger?	<p>Yes. There are a number of customary conditions to Closing which must be satisfied or waived (where capable of waiver) prior to the Merger being implemented. In summary and as more thoroughly described in the Merger Agreement, the conditions include:</p> <ul style="list-style-type: none"> • no legal restraints; • necessary Company Stockholder approval, which has been obtained; • any ASX approvals required to be obtained have been obtained; • confirmation regarding accuracy of representations and warranties of the parties; and • receipt of customary closing deliverables. <p>As at the date of this Information Statement, the Company is not aware of any reason why the conditions will not be satisfied, however, no assurances can be made as to if or when Closing will occur.</p>
What happens if the Merger is not completed?	<p>If the Merger is not completed, you will not receive any payment for your Company Common Stock or Company CDIs. Instead, the Company CDIs will remain listed on the ASX. Company Securityholders will be subject to the ongoing risks associated with an investment in the Company's securities. In this event, the Company would need to raise capital to meet the needs of the business and there is no guarantee that such funding would be available or that the Company will continue as a going concern.</p>
What regulatory approvals and filings are needed to complete the Merger?	<p>No regulatory approvals are required.</p>
What do I need to do now?	<p>We urge you to read this Information Statement (including the Annexes and the materials we refer to in this Information Statement) carefully and consider how the Merger affects you.</p> <p>If you are a Company Stockholder as at the close of business on the Record Date, we ask that you sign and return a copy of the Stockholder Consent attached to the Information Statement as Annex B as soon as possible and no later than 20 days from date delivered.</p> <p>If you are a CDI Holder, you do not need to do anything to receive the Merger Consideration.</p>
What rights do I have if I oppose the Merger?	<p>Stockholders are entitled to exercise appraisal rights in connection with the Merger. If you have not provided written consent to the resolution to approve the Merger Proposal and the Merger is completed, you may dissent and seek payment of the fair value of your Shares pursuant to appraisal rights under Delaware law. To do so, however, you must strictly comply with all of the</p>

Question	Response
	<p>required procedures under Delaware law. See the Section titled “Appraisal Rights” and Annex C, which sets forth Section 262 of the DGCL for further information.</p> <p>Holders of Company CDIs may convert their Company CDIs into Shares prior to the Record Date for the Special Meeting in order to exercise appraisal rights in connection with the Merger, or may exercise such rights after completion of the Merger following the process set forth in Section 262 of the DGCL. Additionally, holders of Company Options are not entitled to exercise appraisal rights in connection with the Merger.</p>
Other questions	
What will happen to my Company Common Stock and Company CDIs after the Merger?	<p>Following the completion of the Merger, your Company Common Stock and Company CDIs will be cancelled pursuant to the Merger Agreement in exchange for the right to receive the Merger Consideration for each Company Common Stock or Company CDI you hold (as applicable). Trading in Company CDIs on the ASX will cease. Price quotations for Company CDIs will no longer be available and we will cease filing reports and other information with the ASX.</p> <p>If you wish to exercise your appraisal rights, your Common Stock or CDIs will still be cancelled but you will instead have a right to receive fair value for your securities if you validly exercise your appraisal rights in accordance with Delaware law.</p>
Do any Directors or executive officers have interests in the Merger that may differ from those of Stockholders (and holders of Company CDIs)?	<p>Yes. When considering the recommendation of the Company Board, you should be aware that some members of the Company Board and the Company’s executive officers have interests in the Merger that are different from, or in addition to, the interests of Company Stockholders (and CDI Holders) generally. The members of the Company Board were aware of these interests, and considered them in (1) evaluating and negotiating the Merger Agreement, (2) approving the Merger Agreement and (3) recommending that the Merger Agreement be adopted by the Company Securityholders (and CDI Holders).</p> <p>See the section titled “SECURITYHOLDER CONSENT” subtitle “Capital Stock of Directors and Certain Officers” for a description of these interests, including the rights of our Directors and executive officers in connection with the Merger.</p>
Can I sell my Company Common Stock?	<p>Yes. You can sell your Company Common Stock at any time before the Record Date.</p> <p>However, if you sell your Company Common Stock prior to the Record Date, you will (among other things) not receive the Merger Consideration.</p>

Question	Response
Can I sell my Company CDIs?	Yes. You can sell your Company CDIs at any time before the close of trading on November 14, 2023. Trading in Company CDIs will be suspended from official quotation on the ASX from the close of trading November 14, 2023. You will not be able to sell your Company CDIs on the ASX after this time. If you sell your Company CDIs on the ASX prior to the Record Date, you will (among other things) not receive the Merger Consideration.
Further information	
Who can help answer my questions?	If you have any questions about the Merger Agreement or the Merger or the other matters described in this Information Statement, please do not hesitate to email or call Ron Warrington at +1 (415) 317-1092 or Tyler Hasting of DLA Piper LLP (US) at tyler.hastings@us.dlapiper.com or +1 (858) 677-1439. In Australia, please call Link Market Services on +1 1300 402 422 which will be open for queries on or around the date of dispatch of this Information Statement on 20 November 2023.

NOTICE OF STOCKHOLDER ACTION BY WRITTEN CONSENT

Stockholder Approval by Written Consent

On November 9, 2023, at a duly called meeting of the Company Board, the Company Board approved the Merger, the Merger Agreement and the Transactions, and the appointment of Anzu RBI Mezzanine Preferred GP LLC as the Representative, and determined that such transactions are reasonable to, advisable and in the best interests of the Company and the Securityholders.³

On November 9, 2023, stockholders of the Company holding at least (i) a majority of the Company Preferred Stock voting together as a combined single class, and (ii) the holders of a majority of the outstanding shares of Company Common Stock, including shares of Company Common Stock represented by Company CDIs (the “**Requisite Consent**”), by written consent in accordance with Sections 228 and 251 of the DGCL, the Company Charter and the Company Bylaws, adopted and approved the principal terms of the Merger Agreement, the Merger and the other Transactions by executing and returning to the Company the Stockholder Consent.⁴ On November 10, 2023, the Company, Acquiror, Merger Sub and the Representative executed the Merger Agreement.

In light of such approval, the Company is delivering this Information Statement, in part, to give all Company Stockholders notice pursuant to Section 228(e) of the DGCL of the adoption and approval of the Merger Agreement, the Merger and the other Transactions.

If you are a Stockholder, after you have had an opportunity to review this Information Statement and accompanying materials, we ask that you sign and return a copy of the Stockholder Consent attached to this Information Statement as Annex B (the “**Stockholder Consent**”) as soon as possible to Ron Warrington. The accompanying Information Statement and exhibits contain important information about your rights as a stockholder. You are urged to read carefully the attached materials.

If you are a CDI Holder, you are not required to do anything to receive the Merger Consideration. As the Requisite Consent to approve the Merger has already been obtained, subject to the Merger completing, Link Market Services Limited (the Company’s Australian Share Registry and Australian Paying Agent) will pay the aggregate amount of Merger Consideration to which you are entitled for the CDIs you hold, in accordance with the Merger timetable. If you do not wish to accept the consideration as provided in the Merger Agreement, you may exercise your appraisal rights following the process further described in this Information Statement.

This Information Statement is first being distributed to the Securityholders of the Company on or about November 20, 2023.

Consents Required

NOTWITHSTANDING THE RECEIPT OF THE STOCKHOLDER CONSENTS REQUIRED BY APPLICABLE LAW, YOUR WRITTEN CONSENT IS IMPORTANT. THE

³ Note that certain of the Directors have interests in the Merger which may differ from other Securityholders. Please see section entitled “Interests of Certain Persons in the Merger” for further information.

⁴ The Common Stockholders who executed the written consent included Anzu Partners and Anzu Industrial RBI USA LLC, together representing approximately 52% of the Common Stock. These Stockholders may have interests that differ from other Stockholders (see section entitled “Interests of Certain Persons in the Merger”).

COMPANY BOARD RECOMMENDS THAT EACH STOCKHOLDER THAT HAS NOT EXECUTED THE STOCKHOLDER CONSENT PROMPTLY EXECUTE THE SIGNATURE PAGE TO THE STOCKHOLDER CONSENT ENCLOSED HERewith AND RETURN AN EXECUTED COPY TO THE COMPANY'S COUNSEL AT THE ADDRESS SET FORTH ABOVE.

Consent Procedure

Section 228 of the DGCL states that, unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any special meeting of such stockholders, or any action which may be taken at any annual or special meeting of stockholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted.

The Company Board requests that you execute the Stockholder Consent attached to this Information Statement as Annex B. For the avoidance of doubt, your consent is not required in order for the Merger to be consummated and by executing the Stockholder Consent, you will also be agreeing to waive your appraisal rights with respect to the Merger Agreement and the Transactions, including the Merger.

Further, by executing the Stockholder Consent and/or by receiving your allocable portion of the Merger Consideration, you will be deemed to have, among other things, (i) adopted and approved the principal terms of the Merger Agreement, the Merger and the other Transactions, (ii) consented and agreed to the allocation and distribution of the Merger Consideration in accordance with the terms of the Merger Agreement, (iii) determined that the consideration payable to you in the Merger is fair and reasonable to the Company and its stockholders, (iv) appointed Anzu RBI Mezzanine Preferred GP LLC as the Representative as your agent, proxy and attorney-in-fact for all purposes of the Merger Agreement, the Transaction Documents and any other agreement entered into in connection with the Merger Agreement, (v) approved the Transactions as interested party transactions, and (vi) waived any and all notice requirements (including any related notice periods) applicable to the Merger or the Merger Agreement, pursuant to the Company Charter, the Company Bylaws or any contract or agreement pursuant to which the Company is obliged to deliver notice of the Merger to its stockholders at any time prior to or following the consummation of the Merger.

Notice of Stockholder Action Without a Meeting

This Information Statement is being provided to you to notify you of the approval of the Requisite Stockholder Approval already obtained, and your right to seek appraisal under Section 262 if the DGCL.

The Information Statement constitutes notice for purposes of Section 228 of the DGCL of the approval and adoption of the matters set forth in the Stockholder Consent, by written consent without a meeting pursuant to the DGCL, the Company Charter and the Company Bylaws. The requisite vote needed to approve such matters was obtained on November 10, 2023, when certain stockholders of the Company executed and delivered to the Company the Stockholder Consent. Details regarding appraisal rights are summarized below under the caption "Appraisal Rights".

Interests of Certain Persons in the Merger

Company Securityholders should be aware that certain officers and directors of the Company and certain Stockholders have interests in the Merger that are different from, and in addition to, their interests as Company Stockholders generally. These interests are summarized below.

Interests of Directors and Certain Officers

The current members of the Company Board are Kevin Hill, Dr. Joseph Monkowski, David Michael and Kevin Landis.

Members of the Company Board and certain of the Company's officers, including Mr. Hill, Chief Executive Officer of the Company, Dr. Monkowski, President and Chief Technical Officer of the Company, and Ronald Warrington, Chief Financial Officer of the Company, beneficially owned shares of Company Stock, and at the Effective Time of the Merger (as defined herein), may receive a right to receive Merger Consideration in exchange for such Company Stock as set forth in the Merger Agreement and as described below in "Material Features of the Merger Agreement and the Merger—Treatment of Company Stock".

- Kevin Hill, Chief Executive Officer of the Company and member of the Company Board, (a) will continue employment with the combined company, and (b) will receive a payment of \$350,000 in conjunction with the 2022 Bonus Plan approved by the Board originally on October 28, 2022 and then extended without modification by the Board on October 27, 2023.
- Dr. Joseph Monkowski, President and Chief Financial Technical Officer of the Company and member of the Company Board, holds shares of Company Stock and will receive proceeds as a result of the Transactions akin to the other Company Stockholders. In addition, Dr. Monkowski will likely continue employment with the combined company and will be eligible for compensation from the combined company in connection with his continued post-closing employment with the combined company.
- Ronald Warrington, Chief Financial Officer of the Company, (a) will continue employment with the combined company, and (b) will receive a payment of \$250,000 in conjunction with the 2022 Bonus Plan approved by the Board originally on October 28, 2022 and then extended without modification by the Board on October 27, 2023.
- David Michael, a director of the Company, is a member of the General Partner of each of Anzu Industrial Capital Partners LP, AICP I Limited and Anzu Fund I Annex LP (collectively, the "***Anzu Funds***"). The Anzu Funds collectively own (i) approximately 34.8% of the Company's shares of outstanding Common Stock, including shares of Company Common Stock represented by CDIs (if any), and will receive approximately US\$17,185 as a result of the Transactions, and (ii) hold a promissory note from the Company in the principal amount of \$400,000 that will be repaid in the amount of \$1,200,000 (including additional cash repayment amount) in connection with the transactions contemplated by the Merger Agreement. Mr. Michael is also a member of the General Partner of Anzu RBI Mezzanine Preferred LLC and a member of the General Partner of Anzu RBI Mezzanine Preferred LLC and a member of Anzu RBI Mezzanine Preferred LLC (the "***Anzu RBI***"). Anzu RBI (x) owns all of the Company's outstanding Preferred Stock and will receive approximately \$13.5 million as a result of the Transaction, (y) owns approximately 13.9% of the Company's shares of outstanding Common Stock, including shares of Company Common Stock represented by CDIs (if any), and will receive approximately US\$6,684 as a result of the Transactions, and (z) holds a promissory note from the Company in the principal amount of \$200,000 that will be forfeited with no return of capital in connection with the transactions contemplated by the Merger Agreement. As a member of the General Partner of each of the Anzu Funds and Anzu RBI and as a member of the Anzu RBI, Mr. Michael participates in making investment and voting decisions, but does not exercise control over such decisions. Mr. Michael's pecuniary interest in the Anzu Funds and Anzu RBI will result in his receiving less than

16% of the amounts payable to the Anzu Funds and Anzu RBI in connection with the transactions contemplated by the Merger Agreement. The Anzu Funds and Anzu RBI have no affiliation with the Acquiror.

- Kevin Landis, a non-executive director of the Company, is the nominee of Firsthand Venture Investors to the Company Board with Firsthand Venture Investors' shareholding at the date of this Information Statement being November 12, 2023. Whilst Kevin is the CEO and CIO of Firsthand Capital Management, the investment adviser to Firsthand Technology Value Fund, Inc. which is a substantial shareholder of the Company, the last director's interest notice lodged on the Company's ASX announcement platform on behalf of Kevin Landis notes that he does not have a relevant interest in any of the Company's issued capital that is held by the Firsthand entities. Kevin Landis does have a relevant interest in 175,786 Company CDIs held by Silicon Valley Investor Holdings Pty Ltd of which Kevin is a director and substantial (95%) shareholder.

Interests of Stockholders who have approved the Merger

The Written Consent approving the Merger has been signed by Stockholders including the Anzu Funds and Anzu RBI. As a result of the Merger, in accordance with the Company's Certificate of Incorporation and the terms of the promissory notes, the following amounts will be received in addition to the Merger Consideration:

- Anzu Funds – the Anzu Funds hold a promissory note from the Company in the principal amount of \$400,000 that will be partially repaid in the amount of \$1,200,000 (including additional cash repayment amount) in connection with the transactions contemplated by the Merger Agreement;
- Anzu RBI – Anzu RBI owns all of the Company's outstanding Preferred Stock and will receive approximately \$13.5 million as a result of the Merger and holds a promissory note from the Company in the principal amount of \$200,000 that will be forfeited with no return of capital in connection with the transactions contemplated by the Merger Agreement.

Director and Officer Indemnification

The Merger Agreement provides that, for a period of six (6) years after the Closing Date, the Surviving Corporation agrees to provide officers 'and directors' liability insurance with respect to acts or omissions occurring at or prior to the Effective Time covering each past and present officer and member of the Board of Directors of the Company who is currently covered by the Company's officers' and directors' liability insurance policy. The terms and coverage amounts of the liability insurance policy shall be at least as favorable as the terms and coverage amounts of the liability insurance policy in effect on the date hereof.

RISK FACTORS

The decision to merge the Company with Acquiror (through a wholly owned subsidiary of Acquiror) was made based on negotiations and discussions between the directors, officers and representatives of the Company and representatives of Acquiror. The Company did not receive a fairness opinion from an investment banker or an independent business appraisal. The decision to consummate the Merger, if the Merger is consummated, means that Company Securityholders will forgo any participation in the possible future growth and prosperity of the Company as an independent entity and in any possible increase in the value of stock ownership in the Company as an independent entity, and there can be no assurance that the consideration to be paid in connection with the Merger will equal or exceed that possible increase in value.

As a result of the Merger, the Company may forgo opportunities that could be realized as a separate company.

In connection with the Merger, all shares of Company Stock will be converted into the right to receive the consideration set forth in the Merger Agreement. By approving the Merger, the Company Stockholders will forego the potential to realize gains that could have been received if the stand-alone company were to increase in value in the future. Although the future of the Company as a stand-alone company is uncertain and subject to significant risk, the potential for financial gain could have been significant.

A portion of the consideration payable in the Merger is subject to certain escrow obligations.

Pursuant to the terms of the Merger Agreement, the consideration otherwise payable to the Securityholders in connection with the Merger will be reduced by \$250,000 and will be placed in escrow as security for purchase price adjustment liabilities (the “**Escrow Amount**”) and by \$25,000 (the “**Reserve**”) to fund potential expenses of the Representative in carrying out its authorized duties under the Merger Agreement. In the event that some or all of the Escrow Amount is used by Acquiror in satisfaction of obligations related to a Negative Adjustment Amount pursuant to the terms of the Merger Agreement, the securityholders will not receive all or a portion of the Escrow Amount. In addition, in the event that some or all of the Reserve is used by the Representative in carrying out its authorized duties under the Merger Agreement, the securityholders will not receive all or a portion of the Reserve.

MATERIAL FEATURES OF THE MERGER AGREEMENT AND THE MERGER

The following is a brief summary of certain material provisions of the Merger Agreement, a copy of which is attached to this Information Statement as Annex A and is incorporated herein by reference. The following summary does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement. To the extent that the description of the Merger Agreement contained in this Information Statement conflicts with the terms actually set forth in the Merger Agreement, the terms set forth in the Merger Agreement will supersede the terms in this Information Statement. Defined terms used but not defined herein shall have the meaning ascribed to them in the Merger Agreement. Please see Article I of the Merger Agreement for a list of defined terms used in the Merger Agreement.

Consideration for the Merger

Under the Merger Agreement, the Acquiror must pay the Merger Consideration in accordance with the terms of the Merger Agreement. The aggregate Merger Consideration payable to Company Securityholders is equal to \$18 million which will be applied to repayment of the Company's debt, redemption of the Company's RBI Preferred Stock and payment of the Company's transaction expenses for the Merger, resulting in an amount of approximately US\$0.0001 per share of Company Common Stock (or AUD\$0.0001 per Company CDI). Further details are provided below.

Treatment of Company Stock

Treatment of Company Stock

At the Effective Time, by virtue of the Merger and without any action on the part of any party, each Company CDI issued and outstanding immediately prior to the Effective Time and all rights in respect thereof, shall be converted automatically in exchange for the right to receive an amount in cash equal to: (i) at the Closing, the Closing CDI Amount plus (ii) the Post-Closing CDI Amount, if, when and as paid.

At the Effective Time, by virtue of the Merger and without any action on the part of any party, each share of RBI Preferred Stock issued and outstanding immediately prior to the Effective Time and all rights in respect thereof, shall be cancelled and converted into and represent the right to receive an amount in cash, without interest, equal to the Closing RBI Preferred Merger Consideration Per Share, plus (ii) the Post-Closing RBI Per Share Amount, if, when and as paid.

At the Effective Time, by virtue of the Merger and without any action on the part of any party, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than the Dissenting Shares and shares owned by the Company) shall be automatically converted into the right to receive an amount of cash (without interest) equal to: (i) at the Closing, the Closing Common Per Share Amount plus (ii) the Post-Closing Per Share Amount, if, when and as paid.

Company Options

At the Effective Time, each unvested Company Option that is outstanding and unexercised immediately prior to the Effective Time shall be cancelled and terminated without consideration.

Effective Time

At the closing of the Merger, Merger Sub and the Company shall file the Certificate of Merger with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of the DGCL (the time of acceptance by the Secretary of State of the State of Delaware of such filing is referred to as the "**Effective Time**"). **The Effective Time is expected to occur on or about November 20, 2023.**

Securityholders' Indemnification Obligations

Indemnification Obligations

Absent fraud, the securityholders of the Company do not have any indemnification obligations other than related to the post-Closing working capital true-up as set forth above in the section *"A portion of the consideration payable in the Merger is subject to certain escrow obligations."*

Securityholders' Representative

By virtue of the adoption of the Merger Agreement by the Securityholders, and without further action by any such Securityholder, each Securityholder will irrevocably appoint, authorize and empower Anzu RBI Mezzanine Preferred GP LLC to serve as the Representative and as the exclusive agent, proxy and attorney-in-fact for such Person for all purposes of the Merger Agreement, the Transaction Documents and any other agreement entered into in connection with the Merger, including the full power and authority on such Person's behalf to give and receive notices and communications, object to such payments, agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims, assert, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to, any other claim by Acquiror against any Company Securityholders or by any Company Stockholder against Acquiror or any dispute between Acquiror and any such Company Securityholder, in each case relating to this Agreement or the transactions contemplated hereby and to take all other actions that are either (i) necessary or appropriate in the judgment of the Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement or the Escrow Agreement.

The Reserve shall be withheld and paid directly to an account maintained by the Representative (or a financial institution selected by the Representative) as a fund for the fees and expenses (including, without limitation, any legal fees and expenses) of the Representative incurred in connection with the Merger Agreement and the Transactions, with any balance of the Reserve not utilized for such purposes, to be disbursed to Acquiror or the Company for prompt further distribution to the Securityholders in accordance with the Securityholders' respective Pro Rata Shares. In the event that the Reserve shall be insufficient to satisfy the fees and expenses of the Representative, and in the event there are any remaining funds in the Escrow Amount to be distributed to the Securityholders immediately prior to the final distribution from the Escrow Amount to the Securityholders pursuant to the Escrow Agreement, the Representative shall be entitled to recover any such expenses from the Escrow Amount to the extent of such funds prior to the distribution of funds to the Securityholders. The Representative shall be entitled to recover any remaining expenses directly from any amounts otherwise payable to the Securityholders or directly from the Securityholders.

Effect of the Merger

At the Effective Time, the effect of the Merger shall be as provided in the Merger Agreement, the certificate of Merger and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, by virtue of the Merger and without further act or deed, at the Effective Time, all the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub became the debts, liabilities and duties of the Surviving Corporation.

- At the Effective Time, except for the name of the Surviving Corporation, the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall become the certificate of incorporation of the Surviving Corporation, until thereafter amended.

- At the Effective Time, except for the name of the Surviving Corporation, the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, became the bylaws of the Surviving Corporation, until thereafter amended.
- At the Effective Time, the Board of Directors of Merger Sub, as in effect immediately prior to the Effective Time, shall be the members of the Board of Directors of the Surviving Corporation, until their respective successors are duly elected, designated and qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation of the Surviving Corporation.
- At the Effective Time, the officers of Merger Sub, as in effect immediately prior to the Effective Time, shall be the officers of the Surviving Corporation, until their respective successors are duly elected, designated and qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation of the Surviving Corporation.

Other Material Provisions of the Merger Agreement

Closing Conditions

The Merger Agreement contains customary closing conditions relating to, among other things:

- no legal restraints;
- completion of all necessary regulatory approval;
- necessary stockholder approval;
- ASX approval;
- confirmation regarding representations and warranties of the parties; and
- receipt of customary closing deliverable.

Representations and Warranties of the Group Companies

The Merger Agreement contains customary representations and warranties of the Company relating to, among other things:

- the organization, standing, and power and authority to enter into the Merger Agreement and each ancillary agreement to which it is a party and to perform its obligations thereunder;
- the Company's capitalization and title to shares;
- the consents and approvals required to enter into the Merger Agreement and to consummate the Transactions;
- the accuracy of the Company's financial statements, accounting matters and the absence of undisclosed liabilities;
- the absence of material changes;
- the absence of pending or threatened litigation against the Company or any of their directors, officers, employees or assets;
- the Company's restrictions on business activities;

- the Company's compliance with laws;
- the Company's title to property;
- the Company's real estate leases;
- the Company's intellectual property;
- the Company's compliance with environmental laws;
- the Company's tax-related matters;
- the Company's employee and labor matters;
- the Company's insurance policies;
- the absence of broker, finder, financial advisor, or investment banker fees or commissions in connection with the Merger Agreement and the Transactions;
- the Company's material contracts and customers;
- the Company's compliance with data security and privacy laws;
- the absence of unlawful payments made by the Company's officers and directors;
- the absence of any untrue statement of material fact or omission of any material fact required to be stated in this Information Statement; and
- the Company's ASX Documents compliance with all Legal Requirements, including the ASX Listing Rules.

Representations and Warranties of Acquiror and Merger Sub

The Merger Agreement contains various customary representations and warranties of Acquiror and Merger Sub, including representations and warranties as to the following matters:

- the organization and standing of Acquiror and Merger Sub;
- the power and authority of each of Acquiror and Merger Sub to enter into the Merger Agreement and each Transaction Document to which it is a party and to perform its obligations thereunder;
- the absence of prior operations of Merger Sub;
- the Acquiror having sufficient funds to consummate the transactions contemplated by the Merger Agreement.
- the absence of broker, finder, financial advisor, or investment banker fees or commissions in connection with the Merger Agreement and the Transactions;

- the truthfulness of the information provided by the Acquiror and Merger Sub set forth in this Information Statement; and
- the absence of reliance on additional representations other than those set forth in the Merger Agreement.

Paying Agent and Letters of Transmittal

At or prior to the Effective Time, Acquiror shall deposit, or cause to be deposited, cash for the benefit of (i) holders of the Company CDIs with and Paying Agent (AUS); (ii) holders of shares of Company Common Stock with the Paying Agent (US); and (iii) the holder of the Company RBI Preferred Stock, each in an amount sufficient to pay the Merger Consideration payable pursuant to Section 1.9(a) and Section 1.10(b) of the Merger Agreement. The Paying Agents will distribute to each of the Company Stockholders (other than the holders of RBI Preferred Stock) a letter of transmittal (the “**Letter of Transmittal**”) to be submitted in connection with the amount to be paid to such Company Stockholder pursuant to the Merger Agreement. The Letter of Transmittal includes a release by the Company Stockholder irrevocably and unconditionally waiving and releasing Acquiror, Merger Sub and the Company from all claims arising out of the Company Stockholder’s capacity as a Company Securityholder, as more thoroughly set forth in the Letter of Transmittal.

Upon delivery to the Paying Agent of a properly completed and duly executed Letter of Transmittal and any other documentation required thereby, the Paying Agent shall, as soon as reasonably practicable (and in no event more than three (3) Business Days) after the date of delivery as to Letters of Transmittal deliver to the holder of record of each Certificate transferred pursuant to a Letter of Transmittal, at the Company Stockholder’s election, either a check or wire transfer, to an account designated by such Company Stockholder pursuant to the Letter of Transmittal, representing the cash amount that such Company Stockholder has the right to receive at Closing.

CDI Holders

If you are a CDI Holder, you are not required to do anything to receive the Merger Consideration and you are not required to submit a Letter of Transmittal. As the Requisite Consent to approve the Merger has already been obtained, subject to the Merger completing, Link Market Services Limited (the Company’s Australian Share Registry and Australian Paying Agent) will pay your aggregate amount of Merger Consideration to which you are entitled for the CDIs you hold, in accordance with the Merger timetable. If you do not wish to accept the consideration as provided in the Merger Agreement, you may exercise your appraisal rights following the process further described in this Information Statement.

CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion summarizes certain material U.S. federal income tax considerations of the Merger that are generally applicable to Company Stockholders whose shares of Company Stock are converted into the right to receive a portion of the Merger Consideration detailed herein and in the Merger Agreement.

This discussion is based upon the Code, applicable Treasury regulations, judicial decisions and administrative rulings and practice, all as in effect as of the date of this Information Statement, and all of which are subject to change, possibly with retroactive effect. As a result, the Company cannot assure Stockholders that the tax consequences described in this discussion will not be challenged by the Internal Revenue Services (“**IRS**”) or will be sustained by a court if challenged by the IRS. The discussion is based on federal income tax law in effect as of the date hereof, which is subject to change at any time (possibly with retroactive effect). The discussion applies to Company Stockholders who are United States persons

within the meaning of Section 7701(a)(30) of the Code (generally, stockholders other than those that are nonresident alien individuals, foreign corporations, foreign partnerships, foreign trusts or foreign estates). The discussion is for general information purposes only and does not deal with all federal income tax considerations that may be relevant to particular classes of Company Stockholders in light of their special circumstances, including without limitation:

- dealers or traders in securities;
- partnerships or other entities taxed as partnerships for U.S. federal income tax purposes;
- Company Stockholders who acquired their Company Stock upon exercise of stock options or in other compensatory transactions or who are subject to alternative minimum tax provisions of the Code;
- banks and other financial institutions;
- tax-exempt organizations and pension funds;
- individual retirement accounts;
- insurance companies;
- Company Stockholders whose shares are qualified small business stock for purposes of Section 1202 of the Code;
- Company Stockholders whose shares are Section 1244 stock;
- Company Stockholders whose functional currency for U.S. federal income tax purposes is not U.S. dollars;
- Company Stockholders who hold their shares as part of a hedge, appreciated financial position, straddle or conversion transaction;
- Company Stockholders who have entered into a constructive sale of Company Stock under the Code;
- Company Stockholders who are subject to the unearned income Medicare contribution tax; or
- Company Stockholders who are U.S. expatriates.

Furthermore, no non-income, state, local or foreign tax considerations are addressed herein, nor are any tax considerations to Company Stockholders who are not United States persons within the meaning of Section 7701(a)(30) of the Code (e.g., nonresident alien individuals, foreign corporations, foreign partnerships, and foreign trusts or foreign estates). This discussion also does not apply to any Company Stockholders exercising appraisal or dissenter rights in connection with the Merger, Company Stockholders who hold shares in Acquiror immediately prior to the Merger, or Company Stockholders who acquired Company Stock pursuant to the exercise of employee incentive stock options or otherwise as compensation or in a transaction subject to the gain rollover provisions of Section 1045 of the Code. The following discussion assumes that all Company Stockholders are non-corporate stockholders who hold their Company Stock as capital assets pursuant to Section 1221 of the Code. In addition, the following discussion does not address the tax consequences of transactions effectuated before, after, or at the same time as the Merger, whether or not they are in connection with the Merger, including, without limitation, the exercise, sale or cancellation of Company Options, Company Warrants or similar rights to purchase stock. **ALL COMPANY STOCKHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE SPECIFIC FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES TO THEM OF THE MERGER.**

Taxable Transaction

The Merger will constitute a fully taxable transaction for U.S. federal income tax purposes in which the Company Stockholders are selling their Company Stock to Acquiror in exchange for cash in the Merger. As a result, each Company Stockholder will generally recognize gain or loss equal to the difference between the amount of total consideration received by such Company Stockholder (including such Company

Stockholder's share of the Reserve and the Escrow Amount, but excluding any portion of a post-Closing payment re-characterized as interest income) and the Company Stockholder's adjusted tax basis in the Company Stock surrendered by such stockholder in the Merger. Gain or loss should be determined separately for each block of shares, with a "block" consisting of shares of Company Stock acquired at the same cost in a single transaction. Such gain or loss will generally be long-term capital gain or loss if the Company Stockholder's holding period for the Company Stock is more than one year as of the Effective Time. Long-term capital gains recognized by certain non-corporate stockholders, including individuals, are currently subject to taxation at preferential rates. Short-term capital gains are subject to tax at ordinary income tax rates. The deductibility of capital losses is subject to limitation. Corporate Company Stockholders are not eligible for preferential long-term capital gains treatment and are subject to tax at normal U.S. federal corporate income tax rates.

The amount and timing of any gain recognition will also depend, in part, upon whether the installment method of reporting applies to the Escrow Amount, as discussed below under "Installment Sale Reporting."

Installment Sale Reporting

If any cash of the Escrow Amount is received by Company Stockholders after the close of the taxable year in which the Merger occurs, the installment sale method of reporting of gain may be available. If the installment method is determined to apply, it must be used unless the Company Stockholder affirmatively and timely elects not to use the installment method or is ineligible for the installment method. Under the installment method, a portion of the excess of the sum of the Merger Consideration received, and to be received, by a Company Stockholder over the Company Stockholder's adjusted tax basis in the Company Stock (such excess, the "**Gross Profit**") should generally be recognized as each payment is received, rather than in the year in which the Merger occurs. The portion of the Gross Profit recognized as taxable gain in each year would be an amount equal to the payment received during such year by the Company Stockholder multiplied by the ratio of the Gross Profit to the sum of all payments of Merger Consideration received, and to be received, by the Company Stockholder (the "**Gross Profit Ratio**"). The Gross Profit Ratio is generally computed based on the assumption that the Company Stockholder will ultimately receive the Company Stockholder's share of the maximum Escrow Amount (excluding interest and imputed interest). To the extent it is subsequently determined that the Company Stockholder will not receive that maximum amount, an appropriate adjustment may be made to the Gross Profit Ratio.

In the event a Company Stockholder's maximum potential share of post-closing consideration outstanding at the end of any taxable year, plus such Company Stockholder's other installment sale receivables, exceeds \$5,000,000 at the end of any taxable year, such Company Stockholder may be required to pay interest on the deferred tax attributable to the gain related to the amount of such installment receivables in excess of \$5,000,000. For partnerships and other pass-through entities, the \$5,000,000 threshold is applied, and the interest charge is computed, at the partner or owner level rather than at the entity level. These rules are set forth in Section 453A of the Code, and their application to the Escrow Amount is subject to a number of uncertainties. The installment method will not apply to Company Stockholders of Company Stock who recognize a taxable loss as a result of the Merger. For purposes of computing a Company Stockholder's gain under the installment sale method, amounts treated as interest to the Company Stockholder would be excluded from the calculation of the amount of gain. You are urged to discuss the application of the installment sale rules with your tax advisor with respect to the tax consequences of a cash payment, if any, you may receive from the Escrow Amount.

If, for any reason, the installment method of reporting is not applicable to a Company Stockholder (because such stockholder is ineligible for such method of accounting, elects not to use such method, recognizes a loss in the Merger or otherwise), then the Company Stockholder will generally be required to

recognize gain or loss in the taxable year in which the Merger occurs with respect to the Company Stockholder's shares of Company Stock surrendered in the Merger. The amount of gain or loss recognized will equal the difference between the Company Stockholder's adjusted tax basis in the stock and the sum of (i) the amount of cash paid at the Closing for such stock, including such Company Stockholder's proportionate share of the Reserve, plus (ii) the fair market value as of the Closing of such Company Stockholder's rights to the Escrow Amount. The fair market value of the contingent payments will be based on the expected amount to be received by the Company Stockholder and will require an assessment of the likelihood that each contingent payment will be made and the application of a time value of money discount factor. To the extent that the cash received thereafter with respect to the Company Stockholder's rights to the Escrow Amount (other than imputed interest as described below) exceeds or is less than the amount taken into account in computing gain or loss pursuant to the preceding sentence, additional gain or loss, respectively, generally would be recognized by such Company Stockholder upon receipt of such cash (or, in certain circumstances, when it becomes clear that no additional cash will be received).

Irrespective of whether a Company Stockholder recognizes gain or loss, and regardless of whether the installment method applies, a portion of the Escrow Amount will generally be characterized as interest income for U.S. federal income tax purposes under the imputed interest rules of the Code. In general, the portion of any such payment constituting interest income will be equal to the excess of the amount of the payment when received over the present value of that amount as of the Effective Time (determined using a discount rate equal to the appropriate "applicable federal rate" for the month in which the Merger occurs). Any such imputed interest will generally be ordinary income.

ALL COMPANY STOCKHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE APPLICATION OF THE INSTALLMENT SALE PROVISIONS OF THE CODE, INCLUDING THE AMOUNT AND TIMING OF GAIN TO BE RECOGNIZED, IF ANY, THE ELIGIBILITY REQUIREMENTS, THE POSSIBLE APPLICATION OF RULES REQUIRING ACCELERATION OF RECOGNITION OF GAIN UPON CERTAIN EVENTS OR THE PAYMENT OF AN INTEREST CHARGE ON DEFERRED TAX LIABILITIES ARISING IN CONNECTION WITH CERTAIN INSTALLMENT SALES, AND THE POTENTIAL BENEFITS AND CONSEQUENCES OF ELECTING OUT OF THE INSTALLMENT METHOD.

As explained above, the Reserve was deposited in an account maintained by the Representative (or a financial institution selected by the Representative) as a fund for the fees and expenses of the Representative. Although the treatment of the Reserve for U.S. federal income tax purposes is uncertain, Company Stockholders generally should be treated as receiving their share of the Reserve in the year the Merger closes rather than in the year that any remaining amounts are distributed to such stockholder (and, therefore, the Company Stockholder's share of the Reserve would not be eligible for the installment method of reporting described above). To the extent that expenses of the Representative are actually paid from the Reserve, Company Stockholders may be entitled to claim a purchase price adjustment if such expenses are incurred in the year of the Merger or a capital loss in the year such expenses are incurred. Any such deduction or loss may be subject to significant limitations.

Backup Withholding

To prevent backup U.S. federal income tax withholding at a rate of 24% with respect to cash received pursuant to the Merger (including any amounts from the Escrow Amount), a Company Stockholder must provide Acquiror with a correct taxpayer identification number (which, in the case of an individual, is his or her social security number) and certify that such Company Stockholder is not subject to backup withholding of U.S. federal income tax. A Company Stockholder may accomplish this certification by either completing and returning to the paying agent the IRS Form W-9 that will be included with the Letter of Transmittal that will be sent to such Company Stockholder or otherwise establishing a basis for

exemption from backup withholding. Certain Company Stockholders (including, among others, all U.S. corporations) are not subject to these backup withholding and reporting requirements. Company Stockholders who fail to provide their correct taxpayer identification numbers and the appropriate certifications or fail to establish an exemption as described above will be subject to backup withholding on cash amounts received in the Merger (including any amounts from the Escrow Amount), and may be subject to a penalty imposed by the IRS. Amounts withheld pursuant to backup withholding are not an additional tax and may be refunded or credited against the Company Stockholder's federal income tax liability provided the required information is timely furnished to the IRS. If there is withholding on a payment to a Company Stockholder and the withholding results in an overpayment of taxes, the affected Company Stockholder should consult with such stockholder's own tax advisor regarding whether and how any refund might be obtained with respect to the amounts so withheld.

THE U.S. FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE HAS BEEN INCLUDED IN THIS INFORMATION STATEMENT FOR GENERAL INFORMATION PURPOSES ONLY AND DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OR DISCUSSION OF ALL POTENTIAL TAX EFFECTS RELEVANT TO COMPANY STOCKHOLDERS. HOLDERS OF COMPANY STOCK SHOULD SEEK TAX ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR, INCLUDING APPLICABLE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES.

CERTAIN MATERIAL AUSTRALIAN TAX CONSIDERATIONS

The following is a general description of the Australian income tax consequences of the Merger that are generally applicable to Company Stockholders whose shares of Company Stock are converted into the right to receive a portion of the Merger Consideration detailed herein and in the Merger Agreement.

The description is based upon the Australian taxation law and administrative practice of the tax authorities in effect at the date of this Information Statement, but is general in nature and is not intended to be an authoritative or complete statement of the laws applicable to the particular circumstances of a Company Stockholder. Taxation laws are complex and are subject to frequent change, as is their interpretation by the courts and the tax authorities, possibly with retroactive effect. As a result, the Company cannot assure Stockholders that the tax consequences described in this discussion will not be challenged by the Australian Taxation Office ("ATO") or will be sustained by a court if challenged. Company Stockholders should seek independent professional advice in relation to their own particular circumstances.

The comments set out below are for general information purposes only and are relevant only to those Company Stockholders who hold their Company Stock on capital account. They do not deal with all Australian income tax considerations that may be relevant to particular classes of Common Stockholders in light of their circumstances, including without limitation:

- hold their Company Stock for the purposes of speculation or a business of dealing in securities (for example, shares held as a revenue asset or as trading stock);
- acquired their Company Stock pursuant to an employee share, option or rights plan;
- are under a legal disability;
- are temporary residents for Australian income tax purposes;
- are subject to special tax rules applicable to certain classes of entity, including partnerships, insurance companies, tax exempt entities or entities subject to the Investment Manager Regime under Subdivision 842-I of the *Income Tax Assessment Act 1997* (Cth); or
- are subject to the taxation of financial arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) in relation to gains and losses on their Investment Manager Regime.

Capital Gains Tax (CGT)

Under the Merger, Company Stockholders will dispose of their Company Stock to Acquiror. For Company Stockholders, this disposal will constitute a CGT event A1 (for Australian CGT purposes). The time of the CGT event will be the Effective Time.

As a result, each Company Stockholder will generally recognize a gain or loss equal to the difference between the amount of total consideration received by such Company Stockholder (including such Company Stockholder's share of the Reserve and the Escrow Amount, but excluding any portion of a post-Closing payment re-characterized as interest income) and the Company Stockholder's cost base in the Company Stock disposed of as part of the Merger. Company Stockholders should make a capital gain on the disposal of each share of Company Stock to the extent that the capital proceeds from the disposal of each share of Company Stock are more than its cost base at the date of disposal. Conversely, Company Stockholder should make a capital loss to the extent that the capital proceeds in respect of each share of Company Stock are less than its reduced cost base at the date of disposal. The sum of all capital gains made by a Company Stockholder on the disposal of their Company Stock to Acquiror, reduced by any capital loss incurred during the year or carried forward from prior years, subject to satisfaction of the relevant loss recoupment tests, is referred to as the net capital gain and should be included in the Company Stockholder's taxable income in the year in which the Effective Date occurs. Alternatively, in the event that a Company Stock makes a capital loss on the sale of their Company Stock, the capital loss may be used to offset a capital gain made during the year or in a future income year, subject to satisfaction of the loss recoupment tests. Capital losses may not be deducted against other income for income tax purposes. As the Merger Consideration will be provided in cash only, no CGT roll-over will generally be available.

CGT Discount

Individuals, complying superannuation funds or trustees that have held Company Stock for more than 12 months prior to the Effective Date may be entitled to discount the amount of the capital gain (after application of capital losses) from the disposal of Company Stock by 50% in the case of individuals and trustees or by 33.3% for complying superannuation entities. For trustees, the ultimate availability of the discount for beneficiaries of the trusts will depend on the particular circumstances of the beneficiaries. Companies that hold Company Stock are not eligible for the CGT discount.

Non-Resident Shareholders

A Company Stockholder who is not a resident of Australia for Australian tax purposes should be able to disregard any capital gain or capital loss that would otherwise arise from the disposal of their Company Stock for Australian income tax purposes, unless their Company Stock constitutes Taxable Australian Property, as defined for Australian income tax purposes, at the Effective Date.

Specifically, Taxable Australian Property includes an indirect interest in Australian real property which constitute interests held in an entity that satisfies both of the following two tests:

- Non-portfolio interest test – holdings, on an associate inclusive basis, in the test entity of 10% or more at the time of disposal (or throughout a 12 month period within the period commencing 24 months before the time of disposal); and

- Principal asset test – where the sum of the market values of the entity’s assets that are taxable Australian real property exceeds the sum of the market value of its assets that are not taxable Australian real property, which is not expected to be the case.

Company Stockholders who are tax residents of a country other than Australia (whether or not they are also residents, or are temporary residents, of Australia for Australian income tax purposes) should take into account the tax consequences of the Merger under the laws of their country of tax residence, as well as under Australian income tax law.

A non-resident individual Company Stockholder who has previously been a resident of Australia and chose to disregard a capital gain or capital loss on ceasing to be a resident will be subject to Australian CGT consequences on disposal of the Company Stock as set out above.

Foreign Resident Capital Gains Withholding Tax

The foreign resident capital gains withholding tax regime applies to transactions involving indirect interests in Australian real property (see above) from relevant foreign residents. The withholding tax rate is 12.5%.

Provided the Company Stock held by Company Stockholders is not ‘taxable Australian property’, the foreign resident capital gains withholding tax regime should not apply. Accordingly, the regime should not operate to require the Acquiror to withhold an amount of the Merger Consideration that is to be paid to the Company Stockholders that are not tax residents of Australia. Company Stockholders that are not tax residents of Australia (particularly those holding a 10% or greater interest in the Company) should seek independent professional taxation advice in this regard.

GST and Stamp Duty

No GST or stamp duty will be payable by Company Stockholders on disposal of their Company Stock under the Merger.

APPRAISAL RIGHTS

Under Delaware state law regarding dissenting stockholders' appraisal rights, Company Stockholders who do not provide written consent in favor of the adoption and approval of the Merger Agreement and the approval of the Merger may, under certain conditions, become entitled to be paid cash for the fair market value or fair value of their stock in lieu of the consideration set forth in the Merger Agreement. CDI holders may exercise the appraisal rights if they convert their CDIs to shares prior to the Record Date for the Transaction, or may exercise such rights after completion of the Transaction following the process to exercise the appraisal right as set out below.

The Merger Agreement provides that any shares of Company capital stock held by a Company Stockholder who has demanded and perfected such holder's appraisal rights with respect to such shares in accordance with Delaware law and who, as of the effective time of the Merger, has not effectively withdrawn or lost such appraisal rights ("**Dissenting Shares**"), if any, shall not be converted into the right to receive a portion of the consideration payable pursuant to the terms of the Merger Agreement and shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to Delaware law. If, after the effective time of the Merger, any Dissenting Shares lose their status as Dissenting Shares, Acquiror will issue and deliver, upon surrender by such stockholder of a certificate or certificates representing shares of Company capital stock in accordance with the provisions of the Merger Agreement, the portion of the Merger consideration to which such stockholder would otherwise be entitled.

Any Company Stockholder or CDI holder who does not wish to accept the consideration provided in the Merger Agreement has the right to demand, pursuant to Delaware law, the appraisal of, and to be paid the fair market value for, the stockholder's shares of Company capital stock. The value of the Company capital stock for this purpose will exclude any element of value arising from the expectation of completion of the Merger.

Appraisal Rights Under Delaware Law. The following is a summary of the procedures to be followed under Section 262 of the DGCL, the full text of which is attached hereto as Annex C and is incorporated herein by reference. The summary does not purport to be a complete statement of, and is qualified in its entirety by reference to, Section 262 of the DGCL and to any amendments to such section after the date of this Information Statement. Failure to follow any of the procedures of Section 262 of the DGCL may result in termination or waiver of appraisal rights under Section 262 of the DGCL. Company Stockholders should assume that the Company will take no action to perfect any appraisal rights of any stockholder. Any Company Stockholder who desires to exercise his, her or its appraisal rights should review carefully Section 262 of the DGCL and is urged to consult his, her or its legal advisor before electing or attempting to exercise such rights.

Only a holder of record or beneficiary owners of shares of Company capital stock (which will include a CDI holder) who has not consented to the Merger is entitled to seek appraisal. The demand for appraisal must be executed by or for the holder of record, fully and correctly, as such holder's name appears on the holder's certificates evidencing shares of Company capital stock, or by a beneficiary owner, with the demand of appraisal reasonably identifying the holder of record of the shares for which the demand is made, and accompanying such demand by documentary evidence of such beneficial owner's beneficial ownership of stock. If the shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, the demand should be made in that capacity, and if the shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand must be made by or for all owners of record. An authorized agent, including one or more joint owners, may execute the demand for appraisal for a holder of record; however, such agent must identify the record owner or owners and expressly disclose in such demand that the agent is acting as agent for the record owner or owners of such shares.

A record holder, such as a broker who holds shares of Company capital stock as a nominee for beneficial owners, some or all of whom desire to demand appraisal, must exercise rights on behalf of such beneficial owners with respect to the shares held for such beneficial owners. In such case, the written demand for appraisal should set forth the number of shares covered by such demand. Unless a demand for appraisal specifies a number of shares, such demand will be presumed to cover all shares held in the name of such record owner.

On November 10, 2023, the Merger was approved by written consent of stockholders without a meeting and on the date hereof, the Company mailed to each Company Stockholder who did not sign the written consent this Information Statement, which contains this notice constituting the notice required under Section 262 of the DGCL. Any Company Stockholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of this notice, demand in writing from the Company an appraisal of his, her or its shares of Company capital stock. Such demand will be sufficient if it reasonably informs the Company of the identity of the stockholder and that the stockholder intends to demand an appraisal of the fair value of his or her shares of Company capital stock. Failure to make such a demand on or before December 4, 2023 (or such other date as is twenty (20) days after the date of mailing of this notice) will foreclose a Company Stockholder of such Company Stockholder's right to appraisal.

A Company Stockholder who elects to exercise appraisal rights must mail or deliver the written demand for appraisal to:

Pivotal Systems Corporation
c/o Ronald Warrington
48389 Fremont Blvd
Fremont, CA 94538

A stockholder may withdraw a demand for appraisal within 60 days after the effective time of the Merger. Thereafter, the approval of the Company will be needed for such a withdrawal. Upon withdrawal of a demand for an appraisal, a Company Stockholder will be entitled to receive the consideration set forth in the Merger Agreement in exchange for his, her or its shares of Company capital stock.

Within 120 days after the effective time of the Merger, in compliance with Section 262 of the DGCL, each of (i) any Company Stockholder who is a "dissenting stockholder," meaning a stockholder who has properly demanded an appraisal and who has not withdrawn such stockholder's demand as provided above, and (ii) the Company have the right to file in the Delaware Court of Chancery a petition demanding a determination of the fair value of the shares held by all of the dissenting stockholders. If, within 120 days after the effective time of the Merger, no petition shall have been filed as provided above, all rights to appraisal will cease and all of the dissenting stockholders who owned shares of Company capital stock will become entitled to receive the consideration set forth in the Merger Agreement in exchange for their shares of Company capital stock. The Company is not obligated and does not currently intend to file a petition. Any dissenting stockholder is entitled, within 120 days after the effective time of the Merger and upon written request to the Company, to receive from the Company a statement setting forth (x) the aggregate number of shares not voted in favor of the Merger and with respect to which demands for appraisal have been received and (y) the aggregate number of dissenting stockholders.

Upon the filing of a petition by a dissenting stockholder, the Delaware Court of Chancery may order a hearing on the petition and that notice of the time and place fixed for such hearing be mailed to the Company and all the dissenting stockholders. Notice will also be published at least one week before the day of such hearing in a newspaper of general circulation published in the City of Wilmington, Delaware, or in another publication deemed advisable by the Delaware Court of Chancery. The costs relating to these notices will be borne by the Company.

If a hearing on the petition is held, the Delaware Court of Chancery is empowered to determine which dissenting stockholders have complied with the provisions of Section 262 of the DGCL and are entitled to an appraisal of their shares. The Delaware Court of Chancery may require that dissenting stockholders submit their share certificates for notation thereon of the pendency of the appraisal proceedings. The Delaware Court of Chancery is empowered to dismiss the proceedings as to any dissenting stockholder who does not comply with such requirement. Accordingly, dissenting stockholders are cautioned to retain their share certificates pending resolution of the appraisal proceedings.

The shares will be appraised by the Delaware Court of Chancery at the fair value thereof as of the effective time of the Merger exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with a fair rate of interest, if any to be paid upon the amount determined to be the fair value.

Company Stockholders considering seeking appraisal should have in mind that the fair value of their shares determined under Section 262 of the DGCL could be more, the same as or less than the consideration payable pursuant to the Merger Agreement.

The Delaware Court of Chancery may also (i) determine a fair rate of interest (simple or compound), if any, to be paid to dissenting stockholders in addition to the fair value of the shares for the period from the effective time of the Merger to the date of the payment, (ii) assess costs of the proceeding among the parties as the Delaware Court of Chancery deems equitable and (iii) order all or a portion of the expenses incurred by any dissenting stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and fees and expenses of experts, to be charged pro rata against the value of all shares entitled to appraisal. Determinations by the Delaware Court of Chancery are subject to appellate review by the Delaware Supreme Court.

Dissenting stockholders are generally permitted to participate in the appraisal proceedings. No appraisal proceedings in the Delaware Court of Chancery shall be dismissed as to any dissenting stockholder without the approval of the Delaware Court of Chancery, and this approval may be conditioned upon terms that the Delaware Court of Chancery deems just. From and after the effective time of the Merger, dissenting stockholders will not be entitled to vote their shares for any purpose and will not be entitled to receive payment of dividends or other distributions in respect of such shares payable to stockholders of record thereafter.

Any stockholder who fails to comply with the requirements of Section 262 of the DGCL, attached as Annex C to this Information Statement will forfeit his, her or its rights to dissent from the Merger and exercise appraisal rights and will receive the consideration to be issued and paid in the Merger as set forth in the Merger Agreement pursuant to the conditions described in this Information Statement.

The full text of Section 262 is attached hereto as Annex C. Failure to follow any of the procedures of Section 262 may result in loss, termination or waiver of appraisal rights.

CDI Holders

CDI Holders may convert their Company CDIs into Company Common Stock prior to the record date for the Merger, or may exercise such rights after completion of the Transaction following the process to exercise the appraisal right as described above, and otherwise comply with the terms set forth above, in order to exercise appraisal rights in connection with the Merger.

It should be noted that because the appraisal process ultimately requires a Court hearing to determine fair value, it can be time-consuming and expensive for securityholders to pursue. Also,

appraisal can, in theory result in the Court valuing the Company at a lower price than the merger consideration. As such, public company shareholders who are dissatisfied with the merger consideration being offered, have not broadly utilized their appraisal rights in order to seek judicial appraisal of the fair value of their securities.

Important Information about this Information Statement

You should consult with your own legal, tax, and accounting advisors regarding the consequences to you of the transactions described in this Information Statement.

No person has been authorized to give any information or to give any representation not contained in this Information Statement and, if given or made, such information or representation must not be relied upon as having been authorized by the Company or Purchaser.

The date of this Information Statement is November 12, 2023, the date on which this Information Statement is first being mailed or emailed to the Company Stockholders. The information contained in this Information Statement is believed to be accurate as of the date hereof but is subject to change, completion or amendment without notice. Neither the delivery of this Information Statement at any time nor any transfer or sale made hereunder will, under any circumstances, create any implication that the information set forth herein is correct as of any subsequent date or that there has been no change in the information set forth herein or in the affairs of the Company since the date hereof. You should not assume that the information included in this Information Statement is accurate as of any date other than the date of this Information Statement. The Company and Purchaser do not intend to publish updates or revisions of the information included in this Information Statement to reflect events or circumstances after the date hereof.

This Information Statement summarizes certain information that is set forth more fully in the Exhibits and other documents enclosed herewith, including the Merger Agreement. This Information Statement is qualified in its entirety by reference to such Exhibits and enclosures, each of which should be read carefully and in its entirety by you in formulating your decision with respect to the Merger Agreement, the Merger and the transactions contemplated thereby, the Stockholder Consent and your appraisal rights with respect to your shares of Company Capital Stock.

* * *

Annex A

Agreement and Plan of Merger

[see attached]

AGREEMENT AND PLAN OF MERGER
BY AND AMONG
OMEGAX, INC.,
OMEGAX MERGER SUB, INC.,
PIVOTAL SYSTEMS CORPORATION
AND
THE SECURITYHOLDERS' REPRESENTATIVE
NOVEMBER 10, 2023

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Annex A	List of Stockholders

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger is made and entered into as of November 10, 2023 (the “**Agreement Date**”), by and among OmegaX, Inc., a California corporation (“**Acquiror**”), OmegaX Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Acquiror (“**Sub**”), Pivotal Systems Corporation, a Delaware corporation (the “**Company**”), and, solely with respect to Sections 1.16, 1.17 and Article VII hereof, the Securityholders’ Representative (as defined herein).

RECITALS

A. The Board of Directors of the Company (the “**Company Board**”) has determined that it would be advisable and in the best interests of the Company Securityholders (as defined herein) that Sub merge with and into the Company (the “**Merger**”), with the Company to survive the Merger and to become a wholly owned subsidiary of Acquiror, on the terms and subject to the conditions set forth in this Agreement, and, in furtherance thereof, has (i) approved the Merger, this Agreement and the other transactions contemplated by this Agreement and declared the Merger to be advisable and (ii) recommended adoption of this Agreement by the Company Stockholders, in accordance with Section 251 and Section 228 of the General Corporation Law of the State of Delaware (“**Delaware Law**”).

B. The Board of Directors of each of Acquiror and Sub has approved the Merger, this Agreement and the other transactions contemplated by this Agreement.

C. Pursuant to the Merger, among other things, the issued and outstanding shares of capital stock of the Company (“**Company Stock**”) shall be converted into the right to receive cash in the manner set forth herein.

D. This Agreement and the transactions contemplated hereby, including the Merger, were approved by the Company Stockholders representing the outstanding shares of Company Stock listed on Annex A hereto in accordance with Section 228 of Delaware Law.

E. The Company, Sub and Acquiror desire to make certain representations, warranties, covenants and other agreements in connection with the Merger as set forth herein.

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

ARTICLE I

THE MERGER

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the meanings indicated below. Unless indicated otherwise, all mathematical calculations contemplated hereby shall be rounded to the hundredth decimal place.

“**Acquiror**” has the meaning given to it in the Preamble.

“**Acquisition Transaction**” has the meaning given to it in Section 4.12.

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

“**Agreement**” means this Agreement and Plan of Merger as the same may be amended or supplemented from time to time in accordance with its terms.

“**Agreement Date**” has the meaning given to it in the Preamble.

“**Antitrust Law**” means HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the FTC Act, as amended, and any other Legal Requirement that is designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization, restraint of trade, or substantial lessening of competition.

“**ASIC**” means the Australian Securities and Investments Commission.

“**ASX**” shall mean ASX Limited ACN 008 624 691 or the financial market operated by it, as the context requires.

“**ASX Listing Rules**” shall mean the Listing Rules of the ASX as amended or waived and applicable to the Company from time to time.

“**ASX Settlement Operating Rules**” means the rules of ASX Settlement Pty Ltd (ACN 008 504 532).

“**Business Day**” means any day other than Saturday, Sunday, or a day on which commercial banks in California or ASX are obligated by any Legal Requirement to close.

“**Delaware Law**” has the meaning given to it in Recital A.

“**Depository**” means CHESS Depository Nominees Pty Ltd.

“**Depository Shares**” shall have the meaning set forth in Section 1.9(a)(vii).

“**Cash**” has the meaning given to it in this Section 1.1 under the definition “Effective Time Cash.”

“**CARES Act**” means the Coronavirus Aid, Relief, and Economic Security Act of 2020, as may be amended or modified from time to time including any rules or regulations promulgated thereunder (including any analogous or similar provision under state and local Law).

“**CFIUS**” means the Committee on Foreign Investment in the United States and each member agency thereof acting in such capacity.

“**Certificate of Merger**” has the meaning given to it in Section 1.2.

“**Certificate(s)**” means the electronic certificates representing shares of Company Common Stock and Company Preferred Stock.

“**Closing**” has the meaning given to it in Section 1.3.

“**Closing CDI Merger Consideration**” means the aggregate amount of the Closing Merger Consideration to be paid pursuant to the Company Certificate of Incorporation to the beneficiary holders of Common Stock held by CHESS Depositary Nominees, which will be paid to the holders of Company CDIs outstanding immediately prior to the Effective Time by virtue of the beneficiary interest in such Depositary Shares underlying the Company CDIs.

“**Closing CDI Amount**” means the quotient obtained by *dividing* (a) the Closing CDI Merger Consideration, *by* (b) the aggregate number of Company CDIs outstanding immediately prior to the Effective Time.

“**CDI Merger Consideration**” means the Closing CDI Merger Consideration.

“**Closing Common Merger Consideration**” means the aggregate amount of the Closing Merger Consideration to be paid pursuant to the Company Certificate of Incorporation to the holders of Common Stock outstanding immediately prior to the Effective Time (excluding any shares held by CHESS Depositary Nominees).

“**Closing Common Per Share Amount**” means the quotient obtained by *dividing* (a) the Closing Common Merger Consideration, *by* (b) the Total Common Stock.

“**Closing RBI Preferred Merger Consideration**” means the aggregate amount of the Closing Merger Consideration to be paid to the holders of RBI Preferred Stock outstanding immediately prior to the Effective Time, as set forth in the Spreadsheet.

“**Closing RBI Preferred Merger Consideration Per Share**” means an amount equal to: (a) the Closing RBI Preferred Merger Consideration, divided by (b) the number of shares of RBI Preferred Stock issued and outstanding as of immediately prior to the Effective Time.

“**Closing Date**” has the meaning given to it in Section 1.3.

“**Closing Date Calculations Delivery Date**” has the meaning given to it in Section 1.15(a).

“**Closing Expenses Certificate**” means a certificate executed by the Chief Financial Officer of the Company, certifying the amount of Transaction Expenses not paid immediately prior to the Effective Time (including an itemized list of each such Transaction Expense, invoices therefor and wire instructions for the payment thereof).

“Closing Merger Consideration” shall mean: (i) the sum of the Merger Consideration, *minus* (ii) the Escrow Amount, *minus* (iii) the Reserve.

“Closing Net Working Capital” means Company Net Working Capital as of the Effective Time.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” has the meaning given to it in the Preamble.

“Company ASX Documents” has the meaning given to it in Section 2.27(a).

“Company Authorizations” has the meaning given to it in Section 2.10.

“Company Balance Sheet” has the meaning given to it in Section 2.5.

“Company Balance Sheet Date” has the meaning given to it in Section 2.6.

“Company Board” has the meaning given to in Recital A.

“Company Capital Stock” means (a) the Company Common Stock; (b) the Company CDIs; and (c) the Company Preferred Stock.

“Company Cash Certificate” means a certificate executed by the Chief Financial Officer of the Company, certifying on behalf of the Company the amount of the Effective Time Cash.

“Company CDI” the CHESS Depository Interests of the Company, each constituting a beneficial interest in one share of Company Common Stock.

“Company Certificate of Incorporation” means the Thirteenth Amended and Restated Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware on May 1, 2023, as amended.

“Company Common Stock” means the common stock, par value of \$0.0001 per share, of the Company.

“Company Disclosure Letter” has the meaning given to it in Article II.

“Company Employee Options” means the Company Options held by an employee or former employee of the Company.

“Company Employee Optionholders” means the holders of Company Employee Options.

“Company Employee Plans” has the meaning given to it in Section 2.16(a).

“Company Indebtedness” means an amount equal to the Indebtedness of the Company as of the Effective Time.

“Company Indebtedness Certificate” means a certificate executed by the Chief Financial Officer of the Company, certifying on behalf of the Company an itemized list of all outstanding Company Indebtedness and the Person to whom such outstanding Company Indebtedness is owed and an aggregate total of such outstanding Company Indebtedness together with customary payoff letters relating thereto and

wire instructions for the payment thereof and all instruments and documents necessary to release any and all Encumbrances securing Company Indebtedness, including any necessary UCC termination statements or other releases, in each case, in form and substance reasonably satisfactory to Acquiror.

“Company Intellectual Property” means all Intellectual Property owned or purported to be owned by the Company or used by the Company in the conduct of its business.

“Company Net Working Capital” means an amount equal to the difference of (a) the total consolidated current assets (*but excluding* any Cash) of the Company, *less* (b) the total consolidated current liabilities (*but excluding* any deferred revenue, Transaction Expenses, Third Party Loans and Indebtedness), as determined in accordance with GAAP, applied on a basis consistent with the Company’s past practices used in preparing the Financial Statements. By way of illustration, a calculation of Company Net Working Capital as of September 30, 2023 is set forth on Schedule 1.1 hereto.

“Company Net Working Capital Target” means \$ 4,000,000.

“Company Non-Employee Options” means the Company Options held by a Person who is neither an employee nor a former employee of the Company.

“Company Non-Employee Optionholders” means the holders of Company Non-Employee Options.

“Company Optionholders” means the holders of Company Options.

“Company Option Plan” means the Company’s 2012 and 2022 Equity Incentive Plans (as amended from time to time).

“Company Options” means options or rights to purchase shares of Company Common Stock.

“Company Preferred Stock” means the RBI Preferred Stock.

“Company Securityholders” means (a) the Company Stockholders, (b) the Company Optionholders, collectively.

“Company Stock” has the meaning given to it in Recital C.

“Company Stockholders” means the holders of shares of outstanding Company Capital Stock.

“Confidentiality Agreement” has the meaning given to it in Section 4.4(a).

“Consent” means any consent, waiver, approval, authorization, exemption, registration or declaration.

“Continuing Employees” means the employees of the Company who remain employees of the Surviving Corporation or become employees of Acquiror following the Effective Time.

“Contract” means any written or oral contract, agreement, purchase or sale order, instrument, license, commitment, undertaking or arrangement.

“Corporations Act” means the *Corporations Act 2001* (Cth), as amended from time to time.

“COVID-19” means the 2019 novel coronavirus.

“Delaware Law” has the meaning given to it in Recital A.

“Dissenting Shares” means any shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and in respect of which appraisal rights have been perfected in accordance with Delaware Law in connection with the Merger.

“Effective Time” has the meaning given to it in Section 1.5.

“Effective Time Cash” means an amount equal to the Company’s total cash, cash equivalents and marketable securities (**“Cash”**) on hand as of the Effective Time.

“Encumbrance” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, or charge, except for restrictions on transfer generally arising under any applicable federal or state or foreign securities laws.

“Environmental Claim” has the meaning given to it in Section 2.14(a)(i).

“Environmental Laws” has the meaning given to it in Section 2.14(a)(ii).

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

“ERISA Affiliate” is any entity that would have ever been considered a single employer with the Company under Section 4001(b) of ERISA or part of the same “controlled group” as the Company for purposes of Section 302(d)(3) of ERISA.

“Escrow Account” means the account held by the Escrow Agent into which the Escrow Amount is deposited and held.

“Escrow Agent” means [Equiniti Trust Company LLC].

“Escrow Agreement” has the meaning given to it in Section 1.4(a)(ii).

“Escrow Amount” means \$250,000.

“Estimated Merger Consideration” has the meaning given to it in Section 1.14.

“Estimated Merger Consideration Statement” has the meaning given to it in Section 1.14.

“Facilities” has the meaning given to it in Section 2.14(a)(v).

“Final Merger Consideration” has the meaning given to it in Section 1.16.

“Financial Statements” has the meaning given to it in Section 2.5.

“Firm” has the meaning given to it in Section 7.13.

“Fraud” means actual and deliberate fraud (and not a constructive fraud, statutory fraud, equitable fraud, negligent misrepresentation or omission, or any form of fraud premised on recklessness or negligence) under the laws of the State of Delaware committed by the Company in the making of the representations and warranties contained in Article II (as modified by the Company Disclosure Letter), with the intent of deceiving another Person to enter into this Agreement, and on which such other Person reasonably relies.

“GAAP” means United States generally accepted accounting principles.

“Governmental Entity” means any national, supra-national, federal, state, municipal, local or foreign government, or any court, tribunal, arbitrator, administrative agency, commission or other governmental or quasi-governmental authority or instrumentality, in each case whether domestic or foreign, any stock exchange or similar self-regulatory organization or any quasi-governmental body exercising any regulatory, Taxing or other governmental or quasi-governmental authority.

“Hazardous Materials” has the meaning given to it in Section 2.14(a)(iii).

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Indebtedness” means, without duplication, all Liabilities in respect of (a) the outstanding principal amount of, and all accrued and unpaid interest on, and other payment obligations (including any prepayment premiums, penalties or other fees payable as a result of the consummation of the Merger) arising under any obligations of the Company consisting of (i) all indebtedness of the Company for borrowed money (other than trade debt incurred in the ordinary course of business consistent with past practices) and (ii) all long term debt obligations of the Company evidenced by notes, bonds, debentures or similar instruments, (b) all guarantees by the Company of Indebtedness of others, (c) obligations under finance leases that are required to be capitalized and accrued as indebtedness in accordance with GAAP.

“Intellectual Property” means all issued patents, patent applications, trademarks and service marks (registered or unregistered), trade names, domain names, copyrights, trade dress, logos, slogans, designs, trade secrets, proprietary or confidential data, know-how, inventions, works of authorship, and all pending applications for and registrations of patents, trademarks, service marks and copyrights.

“International Trade Law” means United States Legal Requirements applicable to international transactions, including, but not limited to, the Export Administration Act, the Export Administration Regulations, the Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations, as amended, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the United States Customs laws and regulations, the Foreign Asset Control Regulations, and any regulations or orders issued thereunder.

“knowledge of the Company” (or similar words), means the actual knowledge of Kevin Hill, Ron Warrington and Joseph Monkowski, after reasonable inquiry regarding any matter requiring such inquiry and such knowledge as would reasonably be expected to be known by such persons in the ordinary and usual course of the performance of their duties to the Company.

“Lease” has the meaning set forth in Section 2.12.

“Leased Real Property” has the meaning set forth in Section 2.12.

“Legal Requirements” means all United States, or foreign federal, state, national, supra-national, provincial, or local laws, constitutions, statutes, codes, rules, common law, regulations, ordinances, executive orders, decrees or edicts by a Governmental Entity having the force of law.

“Letter of Transmittal” has the meaning given to it in Section 1.10(b)(i).

“Liability” means any liability, debt, obligation, Tax, penalty, fine, damage, claim, assessment, amount to be paid in settlement, judgment or other loss, cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due.

“Material Adverse Effect” means any change, event, development or effect with respect to the Company that, individually or in the aggregate, (a) has a material adverse effect on the business, results of operations or financial condition of the Company, taken as a whole, or (b) materially impairs or delays, or would reasonably be expected to prevent or materially impede or delay, the ability of the Company to consummate the transactions contemplated by this Agreement, other than, in each case, any change, event, development or effect that results from or is related to: (i) any change in the financial, banking, currency or capital markets in the United States or any general shutdown of the United States government; (ii) changes in law, GAAP or other applicable accounting standards or the interpretations thereof; (iii) acts of God, epidemics, pandemics (including COVID-19) or other calamities, national or international political or social conditions (or the escalation or worsening thereof), including the engagement by any country in hostilities, whether commenced before or after the date hereof, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence or threatened occurrence of any military or terrorist attack; (iv) any actions taken, or failures to take action, or such other changes or events, in each case, to which Acquiror has consented in writing; (v) the announcement or pendency of, or the taking of any action contemplated by or the compliance with the terms of, this Agreement and the other agreements contemplated hereby, including by reason of the identity of Acquiror or any communication by Acquiror regarding the plans or intentions of Acquiror with respect to the conduct of business of the Company and including the resignation or termination of any employee following the announcement of the transactions contemplated hereby; or (vi) any item or items set forth in the Company Disclosure Letter, in the case of clauses (i), (ii) and (iii), other than to extent such changes, events, developments or effects disproportionately impact the Company in a negative manner relative to the other companies in the industry in which the Company operates.

“Material Contract” has the meaning given to it in Section 2.19.

“Merger” has the meaning given to it in Recital A.

“Merger Consideration” means the amount (without duplication), as may be adjusted pursuant to Section 1.15, equal to: (a) the sum of (i) \$18,000,000, (ii) the Net Working Capital Adjustment and (iii) the Effective Time Cash, less (b) the sum of (i) the Transaction Expenses, (ii) Third Party Loans and (iii) the Company Indebtedness.

“Negative Adjustment Amount” has the meaning given to it in Section 1.16(c).

“Net Working Capital Adjustment” means, if and only if the Company Net Working Capital Target exceeds the Closing Net Working Capital, an amount equal to Closing Net Working Capital minus the Company Net Working Capital Target. For the avoidance of doubt, the “Net Working Capital Adjustment”, if applicable, is a negative number.

“Neutral Auditor” has the meaning given to it in Section 1.15(b).

“Open Source Software” has the meaning given to it in Section 2.13(n).

“Option Surrender Form” has the meaning given to it in Section 1.10(b)(iv).

“Order” means any decree, judgment, injunction or other order, whether temporary, preliminary or permanent.

“Outside Date” has the meaning given to it in Section 6.1(b)

“Paying Agent (AUS)” means Link Market Services.

“Paying Agent (US)” means Equiniti Trust Company LLC.

“Paying Agent Agreement US” has the meaning set forth in Section 1.4(a)(iii).

“Permitted Encumbrances” means: (a) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings diligently pursued for which adequate reserves have been set forth in the Financial Statements in accordance with GAAP applied on a consistent basis; (b) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by applicable Legal Requirements; (c) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens which are not yet due and payable or if due, which are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves have been established; (d) any Encumbrances against the interest of the landlord or sublandlord of any Leased Real Property that are not caused by the Company and do not adversely affect the Company’s leasehold interest in, or the Company’s use of, such Leased Real Property or otherwise impair the Company’s business operations at or relating to such Leased Real Property; (e) non-exclusive licenses of Intellectual Property granted in the ordinary course of business; and (f) such imperfections of title and non-monetary Encumbrances as do not and will not detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise impair business operations involving such properties.

“Person” means any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Entity.

“Personal Data” means: a person’s first name and last name or first initial and last initial in combination with any one or more of the following data elements that relate to the person: (a) Social Security Number; (b) driver’s license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without the security code, access code, personal identification number or password, that would permit access to a person’s financial account; provided, however, that “Personal Data” shall not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

“Positive Adjustment Amount” has the meaning given to it in Section 1.16(b).

“Post-Closing Amount” shall mean (a) any cash disbursements required to be made from the Reserve, *plus* (b) any cash disbursements required to be made, if any, under Section 1.16 to the holder of the RBI Preferred Stock.

“Post-Closing RBI Per Share Amount” means the quotient obtained by *dividing* (a) the Post-Closing Amount, by (b) the total number of RBI Preferred Stock that are issued and outstanding immediately prior to the Effective Time.

“Proceeding” means any administration or judicial action or proceeding.

“Products” has the meaning given to it in Section 2.13(l).

“Property” has the meaning given to it in Section 2.14(a)(iv).

“Pro Rata Share” means with respect to each Company Securityholder the percentage represented by the quotient of (a) the amount of Merger Consideration payable to such Company Securityholder, divided by (b) the aggregate amount of Merger Consideration payable to all Company Securityholders, including in each case and for clarity, amounts allocable to the Escrow Amount and the Reserve, and as set forth in the Spreadsheet next to such Company Securityholder’s name in the column entitled “Pro Rata Share.”

“Proposed Closing Date Calculations” has the meaning given to it in Section 1.15(a).

“Information Statement” shall have the meaning set forth in Section 2.10.

“RBI Preferred Stock” means the RBI Preferred Stock, par value of \$0.00001 per share, of the Company.

“RBI Stockholder Waiver” means the form of waiver reasonably satisfactory to the Parent from the holder of RBI Preferred Stock waiving its rights to receive full payment pursuant to the Company Certificate of Incorporation.

“Release” has the meaning given to it in Section 2.14(a)(vi).

“Remaining Escrow Amount” has the meaning given to it in Section 1.16(c).

“Reserve” has the meaning given to in Section 7.2(c).

“Resolution Period” has the meaning given to in Section 1.15(b).

“Restrains” has the meaning given to in Section 5.1(a).

“Sanctioned Person” means (a) any Person that is the subject or target of Sanctions (including but not limited to any Person that is designated on the list of “Specially Designated Nationals and Blocked Persons” administered by the U.S. Treasury Department’s Office of Foreign Assets Control, or on any list of any economic or financial sanctions administered by the U.S. State Department, the United Nations, the European Union or any member state thereof, the United Kingdom, or any similar list maintained by, or public announcement of Sanctions designation made by, any applicable national economic sanctions authority), (b) any government, national, or resident of, or legal entity located in or organized under, the laws of a country or territory which is the subject of country- or territory-wide Sanctions (including without limitation Cuba, Iran, North Korea, Syria, or the Crimea region of Ukraine), (c) any Person who is owned 50% (fifty percent) or more, or Controlled, by any of the foregoing, or (d) any Person with whom business transactions, including exports and re-exports, would violate Sanctions.

“Sanctions” means all trade, economic and financial sanctions laws administered, enacted or enforced from time to time by (i) the United States (including without limitation the Department of Treasury, Office of Foreign Assets Control and the United States Department of State), (ii) the European Union and enforced by its member states, (iii) the United Nations, (iv) the United Kingdom (including without limitation Her Majesty’s Treasury), or (v) any other similar Governmental Entity with regulatory authority over the Company or any Subsidiary from time to time.

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

“Securityholders’ Representative” has the meaning given to it in Section 7.2(a).

“Seller Group” has the meaning given to it in Section 7.13.

“Specified Courts” has the meaning given to it in Section 7.10.

“Spreadsheet” has the meaning given to it in Section 1.17.

“Stockholder Approval” has the meaning given to it in Section 2.4(a)

“Stockholder Consent” has the meaning given to it in Section 4.3(b).

“Sub” has the meaning given to it in the Preamble.

“Subsidiary” means any corporation, association, business entity, partnership, limited liability company or other Person of which the Company, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (a) directly or indirectly owns or controls securities or other interests representing more than 50% of the voting power of such Person, or (b) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such Person’s board of directors or other governing body.

“Surviving Corporation” has the meaning given to it in Section 1.2.

“Tax” (and, with correlative meaning, **“Taxes”** and **“Taxable”**) means any net income, gross receipts, sales, use, ad valorem, value added, franchise, capital stock, profits, employment, excise, severance, stamp, real or personal property or other tax imposed by any Governmental Entity responsible for the imposition of any such tax (each, a **“Tax Authority”**).

“Tax Return” means any return, amended return, statement, declaration, claim for refund, report, information return, document, notice or form filed or required to be filed with respect to Taxes, including any amendment thereof, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes the Company.

“Third Party Loans” means the Promissory Note dated September 25, 2023 between the Company and Anzu Industrial Capital Partners Annex, L.P. and the Promissory Note dated August 31, 2023 between the Company and Anzu RBI Mezzanine Preferred LLC.

“Total CDIs” means 368,001,067.

“Total Common Stock” means the sum, without duplication, of the aggregate number of shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time

(other than the Depository Shares or shares of Company Common Stock to be cancelled pursuant to Section 1.9(b)) .

“**Transaction Expenses**” means (i) all third party fees and expenses incurred by the Company in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of the Company’s financial advisors, legal counsel, investment bankers, accountants and auditors, that are unpaid immediately prior to the Closing (but excluding, for the avoidance of doubt, any severance or other similar payments, accrued vacation and accrued bonuses and other similar compensation paid or payable and the employer portion of any payroll Taxes of the Company payable thereon in connection with the voluntary or involuntary termination of any employee of the Company after the Effective Time) and (ii) payments under the Company’s 2022 Change of Control Bonus Plan. For the avoidance of doubt, any Transaction Expenses of the Company shall not be included in the calculation of Company Net Working Capital or Indebtedness for any purpose hereunder.

“**Transfer Taxes**” has the meaning given to it in Section 4.8.

Other capitalized terms defined elsewhere in this Agreement and not defined in this Section 1.1 shall have the meanings assigned to such terms in this Agreement.

1.2 The Merger. At the Effective Time, on the terms and subject to the conditions set forth in this Agreement, the applicable provisions of the certificate of in substantially the form attached hereto as Exhibit A (the “**Certificate of Merger**”), Sub shall merge with and into the Company, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation and become a wholly owned subsidiary of Acquiror. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the “**Surviving Corporation**.”

1.3 Closing. Unless this Agreement is earlier terminated in accordance with Section 6.1, the closing of the transactions contemplated hereby (the “**Closing**”) shall take place at a time and date to be specified by the parties which will be no earlier than the second (2nd) Business Day after the ‘Record Date’ for the Merger that is required by the ASX Listing Rules (being 2 Business Days after the Company CDIs are suspended from trading on the ASX following the announcement of the Merger on the ASX) and following satisfaction or waiver of each of the conditions set forth in Article V (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) or at such other time as the parties hereto agree. The Closing shall be effected, to the extent practicable, by conference call, the electronic delivery of certain documents, and the prior physical exchange of certain documents and instruments to be held in trust by outside counsel to the recipient party pending authorization to release at the Closing. The date on which the Closing occurs is herein referred to as the “**Closing Date**.”

1.4 Closing Deliveries.

(a) Acquiror Deliveries. Acquiror shall deliver to the Company, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date, executed on behalf of Acquiror by a duly authorized officer of Acquiror, to the effect that each of the conditions set forth in Section 5.2(a) and Section 5.2(b) have been satisfied;

(ii) an Escrow Agreement, in substantially the form attached hereto as Exhibit B (the “**Escrow Agreement**”), dated as of the Closing Date and executed by Acquiror;

(iii) Paying Agent Agreement, in substantially the form attached as Exhibit C (the “*Paying Agent Agreement US*”), dated as of the Closing Date and executed by Acquiror and each of the Paying Agent (US);

(iv) payment to the Paying Agent (AUS) by wire transfer of immediately available funds an amount equal to the Closing CDI Merger Consideration payable pursuant to the terms of this Agreement in exchange for each Company CDI;

(v) payment to the Paying Agent (US) by wire transfer of immediately available funds an amount equal to the Closing Common Per Share Amount payable pursuant to the terms of this Agreement in exchange for all shares of Total Common Stock;

(vi) payment to the holder of RBI Preferred Stock by wire transfer of immediately available funds an amount equal to the Closing RBI Preferred Merger Consideration Per Share payable pursuant to the terms of this Agreement in exchange for all shares of RBI Preferred Stock;

(vii) payment to the Escrow Agent by wire transfer of immediately available funds the Escrow Amount in accordance with the provisions of the Escrow Agreement;

(viii) payment to the Securityholders’ Representative by wire transfer of immediately available funds the Reserve;

(ix) payments of any amounts of money due and owing from the Company to the loan holders of the Third Party Loans set forth on the Closing Expenses Certificate;

(x) payments of any amounts of money due and owing from the Company to third parties as Transaction Expenses set forth on the Closing Expenses Certificate; and

(xi) payment to holders of outstanding Company Indebtedness set forth on the Company Indebtedness Certificate for which a payoff letter has been delivered, if any, the amount set forth therein by wire transfer of immediately available funds.

(b) Company Deliveries. The Company shall deliver to Acquiror, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by a duly authorized officer of the Company, to the effect that the conditions set forth in Section 5.3(a) and Section 5.3(b) have been satisfied;

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Secretary, certifying (A) resolutions of the Company Board approving and authorizing the execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby and (B) resolutions of the Company Stockholders approving the Merger and adopting this Agreement;

(iii) the Escrow Agreement, dated as of the Closing Date and executed by the Securityholders’ Representative;

(iv) a statement of resignation executed by each of the directors and officers of the Company in office immediately prior to the Closing as directors and/or officers, as applicable, of the Company, effective no later than immediately prior to the Effective Time;

(v) a certificate dated within ten (10) days prior to the Closing Date from the Secretary of State of the State of Delaware certifying that the Company is in good standing under the laws of the State of Delaware;

(vi) the Spreadsheet completed to include all of the information specified in Section 1.17;

(vii) the Estimated Merger Consideration Statement of the Company as contemplated by Section 1.14;

(viii) the Closing Expenses Certificate;

(ix) the Company Indebtedness Certificate;

(x) the Company Cash Certificate; and

(xi) RBI Stockholder Waiver.

(xii) a certificate and related IRS notice, in substantially the form attached hereto as Exhibit E (the “**FIRPTA Certificate and Notification Letter**”), certifying that no interest in the Company is a “United States real property interest” within the meaning of Code Section 897(c)(1) satisfying the requirements of Treasury Regulation Section 1.1445-2(c)(3) and the notification to the Internal Revenue Service required under Section 1.897-2(h) of the Treasury Regulations together with authorization for Acquiror to deliver such completed FIRPTA Certificate and Notification Letter to the IRS.

1.5 Effective Time. On the Closing Date, after the satisfaction or waiver of each of the conditions set forth in Article V, Sub and the Company shall cause the Certificate of Merger to be executed and filed with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of Delaware Law. The Merger shall become effective on the date and time on which the Certificate of Merger has been filed with the Secretary of State of the State of Delaware or such later time as may be agreed to by Acquiror and the Company in writing (and set forth in the Certificate of Merger), such time being referred to herein as the “*Effective Time*.”

1.6 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.7 Certificate of Incorporation and Bylaws.

(a) At the Effective Time, the certificate of incorporation of Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended.

(b) At the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation until thereafter amended.

1.8 Directors and Officers.

(a) At the Effective Time, the members of the Board of Directors of Sub immediately prior to the Effective Time shall be the members of the Board of Directors of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected, designated and qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation of the Surviving Corporation.

(b) At the Effective Time, the officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly appointed or until their earlier death, resignation or removal in accordance with the certificate of incorporation of the Surviving Corporation.

1.9 Effect on Company Capital Stock and Company Options.

(a) Treatment of Company Capital Stock Owned by Company Stockholders; Treatment of Capital Stock of Sub. On the terms and subject to the conditions set forth in this Agreement, by virtue of the Merger and without any action on the part of Acquiror, Sub, the Company, or any holder of the Company Capital Stock and/or the Company Options:

(i) Company CDIs. At the Effective Time, each Company CDI issued and outstanding immediately prior to the Effective Time and all rights in respect thereof, shall be converted automatically in accordance with Section 1.9(a)(viii) into and shall thereafter represent the right to receive an amount in cash equal to at the Closing, the Closing CDI Amount

(ii) As of the Effective Time, all Company CDIs shall no longer be outstanding and shall be canceled in accordance with Section 1.9(a)(viii) and shall cease to exist, and the holders immediately prior to the Effective Time of any Company CDIs shall cease to have any rights with respect thereto, except the right to receive the CDI Merger Consideration to be paid in accordance with this Article I (subject to any applicable withholding Tax in accordance with Section 1.12).

(iii) Preferred Stock. At the Effective Time, each share of RBI Preferred Stock issued and outstanding immediately prior to the Effective Time and all rights in respect thereof, shall be cancelled and converted into and represent the right to receive an amount in cash, without interest, equal to the Closing RBI Preferred Merger Consideration Per Share, *plus* (ii) the Post-Closing RBI Per Share Amount, if, when and as paid (subject to any applicable withholding Tax in accordance with Section 1.12);

(iv) Common Stock. At the Effective Time, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than the Dissenting Shares and shares owned by the Company) shall be automatically converted into the right to receive an amount of cash (without interest) equal to at the Closing, the Closing Common Per Share Amount (subject to any applicable withholding Tax in accordance with Section 1.12).

(v) Amount Received. The amount of cash each holder of Company Preferred Stock, Company Common Stock or Company CDIs is entitled to receive for the shares of Company Preferred Stock, Company Common Stock or Company CDIs held by such holder shall be rounded

to the nearest cent and computed after aggregating cash amounts for all shares of Company Preferred Stock and Company Common Stock held by such holder.

(vi) Company Options. Prior to the Effective Time, the Company Board shall take all actions necessary to provide that each Company Option that is outstanding and unexercised immediately prior to the Effective Time shall be cancelled and terminated without consideration at the Effective Time in accordance with the Company Option Plan. Each outstanding Company Option immediately prior to the Effective Time shall be cancelled and no consideration shall be delivered in exchange therefor. At or before the Effective Time, the Company shall take such actions or cause such actions to be taken as are necessary to cause the transactions contemplated by this Section 1.9(a)(v) to be accomplished and to ensure that all Company Options, to the extent not exercised prior to the Effective Time, shall terminate and be cancelled as of the Effective Time.

(vii) Capital Stock of Sub. Each share of capital stock of Sub that is issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without further action on the part of Acquiror, Sub, the Company or the sole shareholder of Sub, be converted into and become [●] shares of common stock of the Surviving Corporation (and the shares of Surviving Corporation into which the shares of Sub capital stock are so converted shall be the only shares of the Surviving Corporation's capital stock that are issued and outstanding immediately after the Effective Time, such that Acquirer shall become the sole and exclusive owner of all the issued and outstanding capital stock of the Surviving Corporation). Any certificate evidencing ownership of shares of Sub common stock shall evidence ownership of such shares of common stock of the Surviving Corporation.

(viii) Cancellation of Depositary Shares. Any shares of Company Common Stock that are underlying Company CDIs outstanding immediately prior to the Effective Time (the "**Depositary Shares**") shall be automatically canceled and shall cease to exist, and no consideration shall be delivered in exchange therefor (and, for the avoidance of doubt, the Depositary shall not be entitled to receive any Merger Consideration or any CDI Merger Consideration).

(ix) Cancellation of Company CDIs. The Company shall take all actions necessary under the ASX Listing Rules and ASX Settlement Operating Rules to cause the trust over the Depositary Shares held by the Depositary to be terminated and cause the Company CDIs to be cancelled in exchange for the CDI Merger Consideration as set forth in Section 1.9(a)(i), in each case as of the Effective Time.

(b) Treatment of Company Capital Stock Owned by the Company. At the Effective Time, all shares of Company Capital Stock that are owned by the Company as treasury stock or reserved for issuance by the Company immediately prior to the Effective Time shall be cancelled and extinguished without any conversion thereof and no amount of Merger Consideration shall be allocated or paid thereto.

(c) Dissenters' Rights. Notwithstanding anything contained herein to the contrary, at the Effective Time, any Dissenting Shares shall automatically be canceled and no longer outstanding, shall not be converted into the right to receive the cash amount provided for in Section 1.9(a), but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to any such Dissenting Shares pursuant to Delaware Law. Each holder of Dissenting Shares who, pursuant to the provisions of Delaware Law, becomes entitled to payment thereunder for such shares shall receive payment therefor in accordance with Delaware Law (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Shares shall lose their status as Dissenting Shares, then any such shares shall be treated as if they had been converted and become exchangeable into the right to receive, as at the Effective Time, the cash payable

pursuant to Section 1.9(a) in respect of such shares as if such shares never had been Dissenting Shares, and Acquiror shall issue and deliver to the holder thereof, at (or as promptly as reasonably practicable after) the applicable time or times specified in Section 1.10(b), following the satisfaction of the applicable conditions set forth in Section 1.10(b), the amount of cash (without interest) to which such holder would be entitled in respect thereof under this Section 1.9 as if such shares never had been Dissenting Shares. The Company shall give Acquiror prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments regarding demands of appraisal served pursuant to Delaware Law and received by the Company. The Company shall not, except with the prior written consent of Acquiror, voluntarily make any payment or offer to make any payment with respect to, or settle or offer to settle, any claim or demand in respect of any Dissenting Shares.

(d) Rights Not Transferable. The rights of the Company Securityholders as of immediately prior to the Effective Time are personal to each such Company Securityholder and shall not be transferable for any reason otherwise than by operation of law, will or the laws of descent and distribution or with the prior written consent of Acquiror. Any attempted transfer of such right by any holder thereof (otherwise than as permitted by the immediately preceding sentence) shall be null and void.

1.10 Funding of Escrow and Reserve; Payment for Shares.

(a) Funding of Escrow and Reserve.

(i) At the Closing, Acquiror shall transfer the Escrow Amount directly to the Escrow Agent in immediately available funds. The Escrow Amount shall be held in and distributed in accordance with the provisions of this Agreement and the Escrow Agreement. The fees and expenses of the Escrow Agent under the Escrow Agreement shall be borne by Acquiror.

(ii) At the Closing, Acquiror shall transfer the Reserve directly to the Securityholders' Representative in immediately available funds. The Reserve shall be available to reimburse the Securityholders' Representative for expenses incurred by the Securityholders' Representative.

(b) Payment Procedures for Shares.

(i) At or prior to the Effective Time, Acquiror shall deposit, or cause to be deposited, for the benefit of (i) holders of the Company CDIs (other than the Dissenting Shares and Depositary Shares) with the Paying Agent (AUS) cash in Australian dollars; (ii) holders of shares of Company Common Stock with the Paying Agent (US) cash in USD dollars; and (iii) the holder of the Company RBI Preferred Stock cash in USD dollars, each in an amount sufficient to pay the Merger Consideration payable pursuant to Section 1.9(a) and Section 1.10(b). The portion of the Merger Consideration deposited with the applicable Paying Agent shall, pending its disbursement to such holders, be invested by the applicable Paying Agent as directed by Acquiror. Any interest and other income from such investments shall become part of the funds held by the applicable Paying Agent for purposes of paying the Merger Consideration and any amounts in excess of the aggregate amount of the Merger Consideration payable pursuant to Section 1.9(a) shall be returned to the Surviving Corporation. Nothing contained herein and no investment losses resulting from investment of the Merger Consideration deposited with the applicable Paying Agent shall diminish the rights of any holder of Company Common Stock or Company CDIs to receive the Merger Consideration, as applicable, as provided herein, and in the event the funds on deposit with the applicable Paying Agent are insufficient to pay the aggregate Merger Consideration Acquiror shall deposit, or cause to be deposited, with the applicable Paying Agent such additional funds to ensure that the applicable Paying Agent has funds sufficient to pay the aggregate Merger Consideration.

(ii) After the Closing, within two (2) Business Days following the Closing, the applicable Paying Agent shall mail or make available to every Company Stockholder (other than the Company RBI Preferred Stockholders) that has not previously delivered a properly completed and duly executed letter of transmittal substantially in the form attached hereto as Exhibit D (subject to reasonable additional changes by the Acquiror) (the “**Letter of Transmittal**”), (A) a form of Letter of Transmittal, and (B) instructions for use of the Letter of Transmittal.

(iii) Upon delivery to the applicable Paying Agent of a duly executed Letter of Transmittal and any other documentation required thereby, the Paying Agent shall, either (x) at the Effective Time as to Letters of Transmittal delivered at least two (2) Business Days prior to the Closing Date or (y) as soon as reasonably practicable (and in no event more than three (3) Business Days) after the date of delivery as to Letters of Transmittal delivered after the second Business Day prior to the Closing Date, deliver to the Company Common Stockholders (other than Company RBI Preferred Stockholders) providing such Letter of Transmittal, at the Company Stockholder’s election, either a check or wire transfer, to an account designated by such Company Stockholder pursuant to the Letter of Transmittal, representing the cash amount that such Company Stockholder has the right to receive at Closing pursuant to Section 1.9(a) in respect of such Company Stockholder’s Certificate(s) (as set forth on the Spreadsheet), and such Certificate(s) shall be canceled.

(iv) Prior to the Effective Time, Acquiror and the Company shall establish procedures to ensure that (A) the Depositary delivers to the applicable Paying Agent, before the Effective Time, the Certificates representing the Depositary Shares, (B) the Depositary delivers to the applicable Paying Agent a list of Company CDI holders as of the Effective Time, including sufficient information for the applicable Paying Agent to make payment to such Company CDI holders of the CDI Merger Consideration promptly following the Effective Time, (C) the Company requests to the ASX to suspend trading of Company CDIs two (2) Business Days prior to the anticipated Closing Date and (D) promptly following the Effective Time, the Paying Agent makes payment of the Closing CDI Merger Consideration, without interest, to the holders of Company CDIs as of the Effective Time for each Company CDI held by such holders.

(c) No Interest; U.S. Funds. No interest shall accumulate on any cash payable in connection with the Merger. All amounts paid by Acquiror hereunder shall be made in U.S. Dollars.

(d) Transfers of Ownership. If any cash amount payable pursuant to Section 1.9(a) is to be paid to a Person other than the Person to which the Certificate canceled in exchange therefor is registered, it shall be a condition of the payment thereof that the person requesting such exchange shall have paid to Acquiror or any agent designated by it any transfer or other Taxes required by reason of the payment of cash in any name other than that of the registered holder of the Certificate canceled, or established to the satisfaction of Acquiror or any agent designated by it that such Tax has been paid or is not payable.

(e) No Liability. Notwithstanding anything to the contrary in this Section 1.10, none of Acquiror, Sub, the Surviving Corporation or any party hereto shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.11 No Further Ownership Rights in the Company Capital Stock or Company Options. All cash paid or payable following the surrender for exchange of all shares of Company Capital Stock, and all cash paid or payable in respect of the Company Options in accordance with the terms hereof shall be so paid or payable in full satisfaction of all rights pertaining to all shares of Company Capital Stock, the Company Options including any rights to declared but unpaid dividends, and there shall be no further

registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were issued and outstanding immediately prior to the Effective Time.

1.12 Withholding Rights. Each of Acquiror, Sub, the Surviving Corporation and the Escrow Agent shall be entitled to deduct and withhold from the cash otherwise payable under this Agreement to any holder of any shares of Company Capital Stock, any Company Options such amounts as Acquiror, Sub, the Surviving Corporation or the Escrow Agent reasonably determines to be required under the Code or any other provision of federal, state, local or foreign Tax Legal Requirement. Any amounts that are so withheld and remitted to the applicable Governmental Entity shall be treated for all purposes of this Agreement as having been delivered and paid to such holders in respect of which such deduction and withholding was made.

1.13 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and interest in, to and under, and/or possession of, all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of the Company or otherwise, to take all lawful action necessary or desirable to accomplish such purpose or acts, so long as such action is not inconsistent with this Agreement.

1.14 Estimated Merger Consideration. The Company shall deliver to Acquiror, no later than two (2) Business Days prior to Closing, (i) a statement of the Company's calculation of the Merger Consideration based upon the Company's good faith estimates of (A) the Net Working Capital Adjustment, (B) the Effective Time Cash, (C) the Transaction Expenses, (D) Third Party Loans, and (E) the Company Indebtedness (such calculation of the Merger Consideration, the "***Estimated Merger Consideration***," and such statement, the "***Estimated Merger Consideration Statement***"), in each case, including the components thereof and determined in a manner consistent with the definitions thereof and the Company's Financial Statements, books and records, and together with reasonable supporting back-up documentation and (ii) a certificate as to the preparation of the Estimated Merger Consideration Statement executed by the Chief Financial Officer of the Company.

1.15 Determination of Final Merger Consideration.

(a) As soon as practicable, but in no event later than sixty (60) days following the Effective Time, Acquiror shall prepare and deliver to the Securityholders' Representative a statement of Acquiror's good faith proposed calculation of the final Merger Consideration and the amounts owed to the Company Securityholders as a result thereof together with Acquiror's good faith proposed calculations of (A) the Net Working Capital Adjustment, (B) Effective Time Cash, (C) Transaction Expenses, (D) Third Party Loans, and (E) Company Indebtedness, in each case, including the components thereof (including the calculations of the Closing Merger Consideration, the Closing RBI Preferred Merger Consideration, the Closing Common Merger Consideration, the Closing CDI Merger Consideration, the Closing Common Per Share Amount and the Closing CDI Amount) and determined in a manner consistent with the definitions thereof, and together with reasonable supporting back-up documentation (which calculations shall collectively be referred to herein as the "***Proposed Closing Date Calculations***"). The date on which such Proposed Closing Date Calculations is delivered shall be the "***Closing Date Calculations Delivery Date***." The Proposed Closing Date Calculations shall be accompanied by a certificate as to the preparation of the Proposed Closing Date Calculations executed by an officer of Acquiror.

(b) The Securityholders' Representative shall have thirty (30) days following the Closing Date Calculations Delivery Date to review the Proposed Closing Date Calculations. The Securityholders' Representative and its advisors and representatives shall have full access to all relevant

books and records (in electronic format, if available) and employees of the Company to complete its review of the Proposed Closing Date Calculations. Unless the Securityholders' Representative delivers written notice to Acquiror on or prior to the thirtieth (30th) day after the Closing Date Calculations Delivery Date specifying disputed items and the basis therefor with a detailed explanation and calculation of those items, the Securityholders' Representative shall be deemed to have accepted and agreed to the Proposed Closing Date Calculations. If the Securityholders' Representative timely notifies Acquiror of the Securityholders' Representative's objection to the Proposed Closing Date Calculations, Acquiror and the Securityholders' Representative shall, within thirty (30) days following the date of such notice (the "**Resolution Period**"), attempt to resolve their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive. If at the conclusion of the Resolution Period there are amounts still remaining in dispute, then all amounts remaining in dispute shall be submitted to Withum Smith+Brown, P.C. or another firm of nationally recognized independent public accountants reasonably acceptable to Acquiror and the Securityholders' Representative (the "**Neutral Auditor**"). Acquiror and the Securityholders' Representative agree to execute, if requested by the Neutral Auditor, a reasonable engagement letter and to abide by procedures to be mutually agreed upon by Acquiror, the Securityholders' Representative and the Neutral Auditor. The fees and expenses of the Neutral Auditor shall be paid by the non-prevailing party (i.e., the Company Securityholders from the Escrow Amount or Acquiror) as determined in good faith by the Neutral Auditor. The Neutral Auditor shall act as an arbitrator to determine, based solely on presentations by Acquiror and the Securityholders' Representative, and not by independent review, only those items still in dispute. The Neutral Auditor's determination shall be made within thirty (30) days of its engagement, shall be set forth in a written statement delivered to Acquiror and the Securityholders' Representative and shall be final, binding and conclusive. The Proposed Closing Date Calculations shall be revised, if necessary, as appropriate to reflect the resolution of any objections thereto pursuant to this Section 1.15(b) and, as so revised, such Proposed Closing Date Calculations shall be deemed to set forth the final Net Working Capital Adjustment, Effective Time Cash, Transaction Expenses, Company Indebtedness, Third Party Loans and Merger Consideration for all purposes hereunder.

1.16 Payment of Adjustment to Estimated Merger Consideration. At such time as the Merger Consideration (the "**Final Merger Consideration**") is finally determined in accordance with Section 1.15, if:

(a) the Final Merger Consideration is equal to the Estimated Merger Consideration, then Acquiror and the Securityholders' Representative shall jointly instruct the Escrow Agent to release the entire amount of the Escrow Amount from the Escrow Account to: the Paying Agent (US), on behalf of holder of the RBI Preferred Stock in an amount equal to the Escrow Amount to the holder of the RBI Preferred Stock as set forth on the Spreadsheet, such amount to be paid by the Paying Agent to holder of the RBI Preferred Stock, in accordance with the Spreadsheet of the Escrow Amount no later than five (5) Business Days after the Paying Agent's receipt of such amounts from the Escrow Agent, ;

(b) the Final Merger Consideration is greater than the Estimated Merger Consideration (such difference, the "**Positive Adjustment Amount**"), then (A) Acquiror shall pay the lesser of (x) the Escrow Amount and (y) the positive Adjustment Amount, to the Paying Agent (US), on behalf of holder of the RBI Preferred Stock an amount equal to the Positive Adjustment Amount to the holder of the RBI Preferred Stock as set forth on the Spreadsheet, such amount to be paid by the Paying Agent no later than five (5) Business Days after the Paying Agent's receipt of such amounts from Acquiror, and (B) Acquiror and the Securityholders' Representative shall jointly instruct the Escrow Agent to release the entire amount of the Escrow Amount from the Escrow Account to the Paying Agent (US), on behalf of the holder of the RBI Preferred Stock in an amount equal to the Escrow Amount, such amount to be paid by the Paying Agent (US) no later than five (5) Business Days after the Paying Agent's receipt of such amounts from the Escrow Agent;

(c) the Final Merger Consideration is less than the Estimated Merger Consideration (the absolute value of such difference, the “**Negative Adjustment Amount**”), then Acquiror and the Securityholders’ Representative shall jointly instruct the Escrow Agent (A) to release from the Escrow Account to Acquiror the lesser of (x) the Escrow Amount and (y) the Negative Adjustment Amount, and, (B) if applicable, to release any amount remaining in the Escrow Account (the “**Remaining Escrow Amount**”) to the Paying Agent (US), on behalf of the holder of the RBI Preferred Stock, in an amount equal to the Remaining Escrow Amount, such amount to be paid by the Paying Agent (US) to the holder of the RBI Preferred Stock no later than five (5) Business Days after the Paying Agent’s receipt of such amounts from the Escrow Agent.

(d) Notwithstanding anything contained in this Agreement, (x) any Negative Adjustment Amount shall be satisfied solely and exclusively out of the Escrow Amount, and neither the Company Securityholders nor any other Person shall have any obligation or liability to Acquiror for any Negative Adjustment Amount that is in excess of the Escrow Amount, and (y) neither Acquiror nor any other Person shall have any obligation or liability to the Company Securityholders for any Positive Adjustment Amount that is in excess of the Escrow Amount.

1.17 Spreadsheet. The Company has prepared and delivered to Acquiror, a capitalization table dated as of October 31, 2023 (in Datasite data room Index 39 in the Omega Follow Up Request Folder). The Company shall deliver to the Acquiror not later than two (2) Business Days prior to the Closing Date, a spreadsheet (the “**Spreadsheet**”), which spreadsheet is dated as of the Closing Date and sets forth all of the following information, as of the Closing Date and immediately prior to the Effective Time: (i) complete and correct list of Company Securityholders, identifying each Company Securityholder by name, address, and number of Company Security owned, including, if applicable, certificate numbers, the number of whole shares represented by each certificate, the date of issuance of each certificate, book-entry Share amounts and book-entry Share issuance dates, cost basis (if applicable), and whether any stop transfer instructions or adverse claims are outstanding against such shares, in the form required by the Paying Agent (US) (ii) the number and kind of shares of Company Capital Stock held by, or subject to the Company Options (separated by the Company Employee Options and the Company Non-Employee Options) held by, such Persons, (iii) the exercise price per share in effect for each Company Option; (iv) each Company Securityholder’s Pro Rata Share (as a percentage interest and the interest in dollar terms) of the Merger Consideration, (v) each Company Securityholder’s Pro Rata Share (as a percentage interest and the interest in dollar terms) of the amount to be contributed to the Escrow Amount and Reserve on behalf of each Company Securityholder, and (vi) the calculation of the Escrow Amount, the Total Common Stock, the Total CDIs, the Reserve, the Merger Consideration, the Closing Merger Consideration, the Closing RBI Preferred Merger Consideration and the, the Closing Common Per Share Amount and the Closing CDI Amount.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to and except (i) as set forth in the disclosure letter of the Company delivered to Acquiror concurrently with the parties’ execution of this Agreement (the “**Company Disclosure Letter**”) and (ii) in a publicly and accurately disclosed announcement, report, schedule, form or other document filed with or furnished to ASX by the Company and publicly available on the ASX platform prior to the date of this Agreement (“ASX Documents”), other than in any disclosures included in any such Company ASX Document that are cautionary, predictive or forward-looking in nature and not statements of historical fact, and except as otherwise provided herein, the Company represents and warrants to Acquiror as follows as of the date hereof:

2.1 Organization, Standing and Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has full corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted and is duly qualified or licensed to do business and is in good standing in the State of California and each other jurisdiction required for the current conduct of its business, except where the failure to be so qualified or licensed and in good standing would not have a Material Adverse Effect. The Company is not in violation of any of the provisions of the Company Certificate of Incorporation or bylaws of the Company.

2.2 Subsidiaries. The Company has no Subsidiaries.

2.3 Capital Structure.

(a) The authorized capital of the Company consists of (i) 1,200,000,000 shares of Company Common Stock, par value \$0.00001 per share, of which 768,379,278 shares are issued and outstanding, and of which 368,001,067 shares of Company Common Stock are represented by 368,001,067 Company CDIs; and (ii) 120,000,000 shares of Company Common Prime Stock, par value \$0.00001 per share, none of which is issued and outstanding, and (iii) 13,000 shares of Company Preferred Stock, par value \$0.00001 per share, all of which have been designated RBI Preferred Stock, of which 10,519 are issued and outstanding. The rights, privileges and preferences of the Company Preferred Stock and Company Common Prime Stock are as stated in the Company Certificate of Incorporation.

(b) Section 2.3(b) of the Company Disclosure Letter sets forth, as of the Agreement Date, a list of all holders of outstanding Company Options, including the number of shares of Company Common Stock subject to each such Company Option. Each Stock Option (i) was granted with an exercise price equal to or greater than the fair market value of the underlying shares of capital stock, voting securities or other equity securities on the date of grant in compliance with Section 409A of the Code, (ii) has not had its exercise date or grant date delayed or “back-dated,” (iii) has been issued in compliance in all material respects with the terms of the Company Option Plan or its predecessor plan and all applicable Legal Requirements.

(c) As of the Agreement Date, except for (A) currently outstanding Company Options to purchase up to 91,536,478 shares of Company Common Stock which have been granted to employees, consultants or directors pursuant to the Company Option Plan, and (B) a reservation of an additional 38,812,782 shares of its Company Common Stock for direct issuances or purchase upon exercise of Company Options to be granted in the future, under the Company Option Plan (1) no subscription, warrant, option, convertible security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding, and (2) there is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible securities, or other such rights or to distribute to holders of any of its equity securities any evidence of Indebtedness or asset.

(d) All issued and outstanding shares of Company Capital Stock are, and all shares which may be issued pursuant to the exercise of the Company Options, when issued in accordance with the applicable security, will be, duly authorized, validly issued, fully paid and non-assessable and are, to the knowledge of the Company, free of any Encumbrances in respect thereof, other than Permitted Encumbrances. All issued and outstanding shares of Company Capital Stock, the Company Options, and the Company CDIs were issued in material compliance with all applicable state and federal securities Legal Requirements. The outstanding shares of Company Capital Stock have been issued in accordance with the registration or qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom.

2.4 Authority; Noncontravention.

(a) The Company has all requisite corporate power and authority to enter into this Agreement, and subject to adoption by the Company Stockholders of this Agreement and the approval by the Company Stockholders of the Merger, to consummate the transactions contemplated hereby. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby, have been duly and validly authorized by the Company Board. This Agreement has been duly and validly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy, insolvency, moratorium and other similar Legal Requirements affecting the rights of creditors generally and (ii) Legal Requirements governing specific performance, injunctive relief and other equitable remedies. The affirmative vote of the holders of (x) a majority of the Company Preferred Stock voting together as a combined single class (on an as-converted to Company Common Stock basis) and (y) a majority of the outstanding shares of Company Common Stock, including shares of Company Common Stock represented by Company CDIs (which shall be voted by the Depositary in accordance with the voting instructions of holders of Company CDIs), entitled to vote in the Stockholders Consent (the “**Stockholder Approval**”), is the only vote or approval of the holders of Company Capital Stock which is necessary to adopt this Agreement and approve the Merger.

(b) The execution and delivery of this Agreement by the Company does not, and neither the consummation of the transactions contemplated hereby nor compliance by the Company with any of the provisions of this Agreement will, (i) conflict with, or result in a material breach of any provision of the Company Certificate of Incorporation or the bylaws of the Company, each as amended to date, of the Company; (ii) contravene, conflict with or violate any Legal Requirement applicable to the Company or any of its properties or assets; or (iii) require any filings or registration with, notification to, or authorization, consent or approval of any Governmental Entity, other than (x) the filing of the Certificate of Merger, as provided in Section 1.5, (y) each of the consents, authorizations, approvals and filings referred to in Section 2.10 and the expiration of any applicable waiting periods referred to therein, (z) such other Consents which, if not obtained or made, would not be material to the Company or Acquiror and would not prevent, alter or delay any of the transactions contemplated by this Agreement.

(c) The Company Board at a duly held meeting has (i) determined that it is advisable and in the best interests of the Company and the Company Stockholders, to enter into this Agreement, (ii) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein including the Merger, (iii) resolved to recommend that the Company Stockholders to adopt this Agreement, and (iv) directed that such matter be submitted for adoption by a vote of the stockholders of the Company at the Stockholders Meeting.

2.5 Financial Statements. The Company has delivered to Acquiror its audited consolidated financial statements for the fiscal year ended December 31, 2022, and its unaudited consolidated financial statements as at and for the nine-month period ended September 30, 2023 (collectively, the “**Financial Statements**”, with the consolidated balance sheet included in the September 30, 2023 Financial Statements, sometimes referred to herein as the “**Company Balance Sheet**”). The Financial Statements have been prepared in accordance with GAAP (except that the unaudited Financial Statements do not contain footnotes and are subject to normal recurring year-end audit adjustments). The Financial Statements present fairly, in all material respects, the financial condition of the Company at the dates therein indicated and the results of operations and cash flows of the Company for the periods therein specified (subject, in the case of unaudited interim period financial statements, to the absence of footnotes and normal recurring year-end audit adjustments).

2.6 Undisclosed Liabilities. As of the date hereof, except (a) as disclosed, set forth or reflected or reserved against on the Financial Statements, (b) for liabilities permitted by or incurred pursuant to this Agreement, including, without limitation, the Company's Transaction Expenses, (c) for liabilities incurred in the ordinary course of business since September 30, 2023 (the "***Company Balance Sheet Date***"), or (d) liabilities that are not, and would not reasonably be expected to be, material to the Company, the Company is not subject to any liabilities of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet of the Company.

2.7 Absence of Certain Changes. Except as expressly contemplated by this Agreement, between the Company Balance Sheet Date and the Agreement Date, the (a) Company has conducted its business in the ordinary course consistent with past practice, (b) there has not occurred a Material Adverse Effect, and (c) the Company has not taken any action would constitute a breach of the covenants set forth in Section 4.2.

2.8 Litigation. There is no action, suit or proceeding pending before any Governmental Entity, or, to the knowledge of the Company, threatened in writing against the Company or any of its assets or properties or any of their respective directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). There is no material judgment, award, decree, injunction or order against the Company, any of its material assets or properties or any of its directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company). The Company has no action, suit, proceeding, claim, mediation, arbitration or investigation pending against any other Person.

2.9 Restrictions on Business Activities. There is no Contract, judgment or injunction, award, order or decree binding upon and directed specifically to the Company, or any of its assets or properties, which would reasonably be expected to have the effect of materially impairing any current business practice of the Company.

2.10 Compliance with Laws; Governmental Permits. The Company has complied in all material respects with all Legal Requirements applicable to the conduct of its business. As of the date of this Agreement, the Company has obtained each material federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity that is necessary to own, lease and operate its properties and to carry on its business as owned, leased, operated or carried on as of the Agreement Date (all of the foregoing material consents, licenses, permits, grants, and other authorizations, collectively, the "***Company Authorizations***"), and all of the Company Authorizations are in full force and effect, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. The Company has not received any written notice from any Governmental Entity regarding (a) any material violation of any Legal Requirements or material violation of any Company Authorization that has not been cured or remedied or (b) any revocation, withdrawal, suspension, cancellation or modification of any Company Authorization. No consent, notice, waiver, approval, Order or authorization of, or registration, declaration or filing with any Governmental Entity is required by, or with respect to, the Company in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (a) such consents, notices, waivers, approvals, Orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws (b) the filing of the Certificate of Merger as provided in Section 1.5 hereof, (c) the distribution of an information statement with the Stockholder Consent (including any other document incorporated or referenced therein, as each may be amended or supplemented, the "***Information Statement***") and any other filings required under, and compliance with other applicable requirements of the ASX Listing Rules and ASX Settlement Operating Rules to facilitate the Merger in compliance with the ASX Listing Rules, and (d) such filings and notifications as may be required to be made by the Company in connection with the Merger under applicable antitrust laws, the expiration or early termination of

applicable waiting periods under the HSR Act and the expiration or termination of waiting periods or the receipt of approvals or consents required under other applicable antitrust laws, and (e) as set forth in Section 2.10 of the Disclosure Letter.

2.11 Title to Property and Assets. The Company has good and marketable title to all of their respective tangible properties and interests in tangible properties and assets, real and personal, reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice), or, with respect to leased properties and assets, including, without limitation, the Leased Real Property, valid leasehold interests in such properties and assets which afford the Company peaceful and undisturbed leasehold possession of such properties and assets, in each case, free and clear of all Encumbrances, except Permitted Encumbrances. The property and equipment of the Company that are used in the operations of its business are (a) in good operating condition and repair, subject to normal wear and tear and (b) not obsolete, dangerous or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business, consistent with past practice. All properties used in the operations of the Company are reflected on the Company Balance Sheet to the extent required under GAAP to be so reflected.

2.12 Real Estate. Section 2.12 of the Company Disclosure Letter sets forth a list of all leases and subleases (each a “*Lease*”) under which the Company occupies or has the right to occupy real property (the “*Leased Real Property*”). Section 2.12 of the Company Disclosure Letter identifies the address or legal description of each parcel of Leased Real Property. To the knowledge of the Company, the Company has adequate rights of ingress and egress into the Leased Real Property. The Company does not own any real property. To the knowledge of the Company, each Lease is valid, in full force and effect and enforceable against the Company. The Company is not in default (and, to the knowledge of the Company, there is no event or condition that after notice or lapse of time or both would constitute a default by the Company) under any Lease and, to the knowledge of the Company, there is no default (or event or condition that after notice or lapse of time or both would constitute a default) by any other party thereto under any Lease.

2.13 Intellectual Property.

(a) Section 2.13(a) of the Company Disclosure Letter sets forth a true and complete list of all (i) Company Intellectual Property owned or purported to be owned by the Company and for which (a) the Company has been issued a registration of any Intellectual Property or (b) the Company is currently prosecuting applications for registration of any Intellectual Property; (ii) domain names registered in the name of the Company or used by the Company in the conduct of the business; and (iii) unregistered trademarks owned by the Company or used by the Company in the conduct of the business.

(b) All Company Intellectual Property owned or purported to be owned by the Company that have been issued by, or registered with, or the subject of a pending application filed with, as applicable, the U.S. Patent and Trademark Office, the U.S. Copyright Office or any similar foreign office or agency are currently in compliance in all material respects with formal legal requirements (including without limitation, as applicable and to the extent due, payment of filing, examination and maintenance fees, inventor declarations, proofs of working or use, timely post-registration filing of affidavits of use and incontestability, and renewal applications), except as the Company may have let the same lapse or become abandoned in the ordinary course of business. No Person has challenged in writing the validity or enforceability of any material Company Intellectual Property owned or purported to be owned by the Company.

(c) To the knowledge of the Company, none of the patents owned by the Company has been or are now involved in any interference, reissue, re-examination or opposition proceeding. To the knowledge of the Company, there is no patent or patent application of any third party that potentially interferes with any patent owned by the Company .

(d) The Company owns free and clear of all Encumbrances (other than Permitted Encumbrances) all right, title and interest in and to, the material Company Intellectual Property owned by or purported to be owned by the Company. To the knowledge of the Company, the Company has valid and enforceable rights or licenses under contract to use, all material items of Company Intellectual Property that are not owned by the Company. To the knowledge of the Company, the Company Intellectual Property constitutes all Intellectual Property reasonably necessary to the conduct of the Company's business as presently conducted.

(e) Section 2.13(e) of the Company Disclosure Letter sets forth a true and complete list of all license agreements to which the Company is a party (i) granting any other Person the right to use the Company Intellectual Property (other than confidentiality and non-disclosure agreements and non-exclusive licenses granted in the Company's ordinary course of business substantially in Company's standard forms of customer or end-user agreements, terms of use or terms of service), or (ii) pursuant to which Company is authorized to use any third party Intellectual Property, other than confidentiality and non-disclosure agreements and commercial "off-the-shelf," "shrink wrap" or "click wrap" internal use object code software made available for a total cost of less than \$25,000 and licenses of Open Source Software. The Company is not in material breach under any Contract to use any item of material Company Intellectual Property that is licensed to the Company.

(f) To the knowledge of the Company, the conduct of the business as conducted by the Company does not constitute an infringement, misappropriation or other violation of any Intellectual Property rights of any Person. The Company has not received during the three (3) year period prior to the Agreement Date, any written notice of infringement, misappropriation or violation of any Intellectual Property right of any other Person.

(g) To the knowledge of the Company, there is no infringement, misappropriation or unauthorized use by any Person of any of the material Company Intellectual Property owned by the Company .

(h) To the knowledge of the Company, no Person has challenged in writing or commenced any litigation to which the Company is a party the ownership, use, validity or enforceability of any of the material Company Intellectual Property owned by the Company .

(i) There are no settlement agreements to which the Company is a party arising out of any legal Proceeding, stipulations filed by the Company with any Governmental Entity or judgments or orders of any Governmental Entity that: (A) restrict the Company's rights to use any material Company Intellectual Property, (B) restrict the Company's business, in order to accommodate a third party's Intellectual Property (except customary restrictions in any licenses granting Company the right to use such Intellectual Property), or (C) permit third parties to use any material Company Intellectual Property except as provided Section 2.13(e) of the Company Disclosure Letter.

(j) All former and current employees, and any consultants and contractors of the Company that have generated any Intellectual Property in connection with the performance of services for the Company, have executed written instruments with the Company that assign to the Company all rights, title and interest in and to any and all (A) inventions, improvements, ideas, discoveries, writings and other works of authorship, and information relating to the services performed for the Company or any of the

products or services being researched, developed, manufactured or sold by the Company and (B) Intellectual Property relating thereto.

(k) The Company has taken reasonable actions intended to preserve the confidentiality and to enforce the Company's rights of all material trade secrets owned by the Company and used or held for use by the Company in its business.

(l) Except where necessary to provide access to employees, consultants and contractors providing services for or on behalf of the Company, the Company has not granted, directly or indirectly, any current or contingent rights, licenses or interests in or to any source code of any of the products currently or previously (within the last three (3) years) developed by the Company and manufactured, licensed, sold, distributed and/or otherwise made commercially available by the Company ("**Products**"), and to the knowledge of the Company, the Company has not provided or disclosed any source code of any Product to any Person.

(m) The Company takes reasonable measures to confirm that the Products do not contain any "viruses", "worms", "time bombs", "key-locks", or any other devices created that could disrupt or interfere with the operation of the Products or equipment upon which the Products operate, or the integrity of the data, information or signals the Products produce in a manner adverse to the Company or any customer, licensee or recipient.

(n) Except as set forth on Section 2.13(n) of the Company Disclosure Letter, (i) no software governed by the GNU General Public License or GNU Lesser General Public License or other similar "copyleft" license (such software, "**Open Source Software**"), is used in, incorporated into or integrated or bundled with any Products and (ii) none of the licenses relating to the Open Source Software listed on Section 2.13(n) of the Company Disclosure Letter have been used in a manner that would obligate the Company to (A) distribute or disclose any other software combined, distributed or otherwise made commercially available with such Open Source Software in source code form or (B) license or otherwise make available such other software combined, distributed or otherwise made commercially available with such Open Source Software or any associated Intellectual Property on a royalty free basis.

2.14 Environmental Matters.

(a) As used in this Agreement, the following terms shall have the meanings indicated below:

(i) "**Environmental Claim**" means any claim, action, cause of action, investigation or notice (written or oral) by any person or entity alleging potential liability (including potential liability for investigatory costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, Release or threatened Release of any Hazardous Materials, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

(ii) "**Environmental Laws**" means any federal, state, local and common Legal Requirements, ordinances, codes, regulations, rules and orders relating to pollution or protection of human health or the environment, including without limitation, laws relating to the exposure to, or Releases or threatened Releases of, Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Materials and all laws and regulations with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

(iii) “**Hazardous Materials**” means any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive substance, material or waste defined in or regulated under any Environmental Laws.

(iv) “**Property**” means all real property leased by the Company.

(v) “**Facilities**” means all buildings and improvements on the Property.

(vi) “**Release**” means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including ambient air, surface water, groundwater and surface land or subsurface soils) or into or out of any Facilities or Property, including the movement of Hazardous Materials through or in the air, land, soil, surface water, groundwater, Facilities or Property.

(b) The Company is in compliance with all applicable Environmental Laws, except where failure to be in compliance could not reasonably be expected to be material to the Company.

(c) There is no Environmental Claim pending or, to the knowledge of the Company, threatened in writing against the Company .

2.15 Taxes.

(a) The Company has timely filed all material Tax Returns required to be filed by it and has timely paid all Taxes reflected as due on any such Tax Return (taking into account timely filed extensions to file). The Company has delivered or made available to Acquiror correct and complete copies of all material Tax Returns filed by the Company within the last four (4) calendar years.

(b) The Company has properly withheld all Taxes required to be withheld and paid over such Tax to the appropriate Tax authority;

(c) There is no material Tax deficiency, dispute or claim proposed in writing, or to the knowledge of the Company assessed, against the Company that is not reflected as a liability on the Company Balance Sheet through the Company Balance Sheet Date.

(d) The Company is neither a party to nor bound by any Tax sharing, Tax indemnity, or Tax allocation agreement.

(e) The Company has never been a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (or any similar provision of state, local or non-U.S. law) in the three (3) years prior to the date of this Agreement;

(f) The Company has no liability for Taxes of any Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-U.S. law), as transferee or successor, by contract or otherwise;

(g) The Company has provided or made available to Acquiror all documentation relating to any applicable Tax holidays.

(h) The Company is not, and has not been, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(i) The Company has withheld, reported and paid over to the proper Tax Authority (or is properly holding for such timely payment) all material amounts required to be so withheld, reported or paid over under all applicable Legal Requirements.

(j) There is no power of attorney given by or binding upon the Company with respect to Taxes for any period for which the statute of limitations (including any waivers or extensions) has not yet expired that is currently in effect.

(k) The Company has not executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any material Tax which waiver or extension is currently in effect.

(l) The Company has never been a member of an affiliated group filing a consolidated federal income Tax Return.

(m) The Company currently is not the beneficiary of any extension of time within which to file any Tax Return. There are no Encumbrances for Taxes (other than Permitted Encumbrances) upon any of the assets of the Company.

(n) The Company has not participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(o) The Merger shall not give rise to any Transfer Tax imposed by Australian Taxing Authority.

2.16 Employee Benefit Plans and Employee Matters.

(a) Section 2.16(a) of the Company Disclosure Letter sets forth, as of the date hereof, each deferred compensation and each material bonus, incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other “welfare” plan, fund or program (within the meaning of Section 3(1) of ERISA); each profit-sharing, stock bonus or other “pension” plan, fund or program (within the meaning of Section 3(2) of ERISA); and each other material employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Company or any ERISA Affiliate, or to which the Company or any ERISA Affiliate is a party or has any liability, for the benefit of any employee, director or consultant of the Company or any ERISA Affiliate (collectively, the “**Company Employee Plans**”).

(b) No liability under Title IV or Section 302 of ERISA has been incurred by the Company or any ERISA Affiliate with respect to a Company Employee Plan that has not been satisfied in full, and no condition exists that presents a material risk to Acquiror of incurring any such liability with respect to a Company Employee Plan.

(c) The consummation of the transactions contemplated by this Agreement will not (i) entitle any employee or officer of the Company to severance pay or unemployment compensation, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer.

(d) There are no pending, or to the knowledge of the Company, threatened claims by or on behalf of any Company Employee Plan, by any employee or beneficiary covered under any such Company Employee Plan (other than routine claims for benefits) and each Company Employee Plan has been established and maintained in all material respects in accordance with applicable Legal Requirements.

(e) Each Company Employee Plan has been established, operated, funded and administered in all material respects in accordance with its terms and applicable Legal Requirements.

(f) Each Company Employee Plan that is intended to qualify under Section 401(a) of the Code is so qualified and has received a favorable determination or approval letter from the IRS with respect to such qualification, and, to the knowledge of the Company, no event or omission has occurred that would cause any Company Employee Plan to lose such qualification.

(g) No litigation or governmental administrative proceeding, audit or other proceeding (other than those relating to routine claims for benefits) is pending or, to the knowledge of the Company, threatened in writing with respect to any Company Employee Plan or any fiduciary or service provider thereof. All payments and/or contributions required to have been made with respect to all Company Employee Plans either have been made or have been accrued in accordance with the terms of the applicable Company Employee Plan and applicable law.

(h) No Company Employee Plan is a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which the Company or any ERISA Affiliate could incur liability under Section 4063 or 4064 of ERISA or a plan maintained by more than one employer as described in Section 413(c) of the Code.

(i) Neither the Company nor any ERISA Affiliate has ever maintained any Company Employee Plan that is or was subject to Title IV of ERISA, Section 412 of the Code, Section 302 of ERISA or is a Multiemployer Plan.

(j) None of the Company Employee Plans provides health care or any other non-pension benefits to any employees after their employment is terminated (other than as required by Part 6 of Subtitle B of Title I of ERISA or similar state law), and the Company has not promised to provide such post-termination benefits.

(k) No Company Employee Plan is subject to the laws of any jurisdiction outside the United States.

(l) Neither the execution and delivery of this Agreement, the approval of this Agreement by the Company Stockholders, nor the consummation of the transactions contemplated hereby is reasonably likely to (either alone or in conjunction with any other event): (i) limit the right of the Company or any of its ERISA Affiliates to amend, merge, terminate or receive a reversion of assets from any Company Employee Plan or related trust; (ii) result in any “parachute payment” as defined in Section 280G(b)(2) of the Code; or (iii) result in a requirement to pay any tax “gross-up” or similar “make-whole” payments to any employee, director or consultant of the Company or an ERISA Affiliate.

(m) There are no formal collective bargaining agreements, union contracts and similar agreements in effect that cover any employees of the Company.

(n) There is no labor strike, lockout or stoppage pending or, to the knowledge of the Company, threatened in writing against the Company. To the knowledge of the Company, there is no labor union organizing activity involving any employees of the Company .

(o) As of the date hereof, no unfair labor practice or labor charge or complaint is pending or, to the knowledge of the Company, threatened in writing with respect to the Company before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Entity.

(p) The Company has withheld and paid to the appropriate Governmental Entity or are holding for payment not yet due to such Governmental Entity all amounts required to be withheld from employees of the Company and, to the knowledge of the Company, is not liable for any arrears of wages, penalties or other sums (excluding Taxes, which are the subject of Section 2.15 hereof) for failure to comply with any applicable Legal Requirements relating to the employment of labor. The Company has paid in full to all its employees or adequately accrued in accordance with GAAP for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees.

(q) The Company is not a party to, or to the knowledge of the Company, otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating to employees or employment practices.

(r) All employees are “at will” employees.

2.17 Insurance. The Company maintains policies of insurance and bonds of the type and in amounts customarily carried by persons conducting businesses or owning assets similar to those of the Company. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and the Company is otherwise in compliance with the terms of such policies and bonds. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

2.18 Brokers. Other than fees payable to Needham & Company LLC or its Affiliates, the Company has no obligation for the payment of any fees or expenses of any investment banker, broker or finder in connection with the origin, negotiation or execution of this Agreement or in connection with the Merger or any other transaction contemplated by this Agreement.

2.19 Material Contracts. Section 2.19 of the Company Disclosure Letter contains a complete list, as of the date hereof, of all Contracts (other than Company Employee Plans) to which the Company is a party to or bound and that fall within any of the following categories (each, a “**Material Contract**”):

(a) each Contract presently in effect with a customer or client for the purchase of products or services from the Company that resulted in payments to the Company in excess of \$250,000 during the twelve-month period ended December 31, 2022;

(b) each Contract presently in effect (other than Contracts that relate to Transaction Expenses) with a supplier or other vendor for the purchase of products or services by the Company involving payments by the Company in excess of \$200,000 during the twelve-month period ended December 31, 2022;

(c) each Contract involving the exclusive license of Company Intellectual Property owned or purported to be owned by the Company to another Person not terminable at the Company’s election;

(d) each Contract involving the license of Company Intellectual Property to the Company from another Person (other than confidentiality and non-disclosure agreements and commercial

“off-the-shelf,” “shrink wrap” or “click wrap” internal use object code software and licenses of Open Source Software);

(e) each Contract that relates to any joint venture, partnership, limited liability or other similar agreements or arrangements relating to the formation, creation, operation, management or control of any joint venture or partnership;

(f) each Contract pursuant to which the Company has any Indebtedness in an amount in excess of \$200,000 outstanding in the aggregate or that is for any interest rate, currency or commodity derivatives or hedging transaction;

(g) each Contract that provides for the creation of any lien, other than a lien created in the ordinary course of business or in connection with the transactions contemplated hereby, with respect to any asset (including Company Intellectual Property or other intangible assets) material to the conduct of the business of the Company, taken as a whole;

(h) each Contract that is a settlement, conciliation or similar agreement which would require the Company to pay consideration of more than \$200,000 after the Agreement Date or that impose any other material obligations upon the Company after the Agreement Date;

(i) each Contract that is a collective bargaining agreement or any other Contract with a labor organization;

(j) each Contract under which the Company are reasonably likely to be obligated to make or entitled to receive payments in the future in excess of \$200,000 per annum or \$500,000 during the life of the Contract; and

(k) any Contract required to be listed in Section 2.9 of the Company Disclosure Letter; and

No such Material Contract requires any Consent in connection with the Merger. Each such Material Contract is in full force and effect, and, assuming such Material Contract constitutes the valid and binding obligation of the other party thereto, is valid, binding and enforceable against the Company in accordance with its terms in all material respects, except (i) applicable bankruptcy, insolvency, moratorium and other similar Legal Requirements affecting the rights of creditors generally and (ii) Legal Requirements governing specific performance, injunctive relief and other equitable remedies. The Company is not in default under or in breach of any Material Contract that would permit the premature termination of such Material Contract, and to the Company’s Knowledge, no third party to any Material Contract is in default under or in material breach of such Material Contract.

2.20 Customers. Section 2.20 to the Company Disclosure Letter sets forth a list of the five (5) largest customers of the Company (based on 2022 annual revenues). Since December 31, 2022, there has been no termination of the business relationship of the Company with any such customer, nor to the knowledge of the Company has any such customer threatened in writing to so terminate such business relationships.

2.21 Bank Accounts. Section 2.21 of the Company Disclosure Letter sets forth a true and complete list of the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts.

2.22 Privacy and Data Security.

(a) The Company is in material compliance with (i) all applicable Legal Requirements regarding the protection, storage, use, and disclosure of Personal Data, (ii) all of the Company's policies regarding privacy and data security, including, without limitation, all privacy policies and similar disclosures published on the Company's web sites and/or otherwise communicated to third parties and (iii) all contractual commitments that the Company has agreed to with respect to Personal Data.

(b) The Company has commercially reasonable safeguards in place to protect Personal Data in the Company's possession or control from unauthorized access by third persons, including the Company's employees and contractors, and the Company requires all of its service providers, vendors and other recipients of Personal Data from the Company to implement and maintain commercially reasonable safeguards to protect all Personal Data.

(c) To the knowledge of the Company, no person or entity has made any illegal or unauthorized use of Personal Data that was collected by or on behalf of the Company and is in the possession or control of the Company.

(d) To the knowledge of the Company, the Company is not currently under any investigation by any state, federal, or foreign jurisdiction regarding its protection, storage, use, and disclosure of Personal Data, nor has the Company received complaints from any customer of the Company regarding the Company's protection, storage, use, and disclosure of Personal Data.

2.23 International Trade Matters. The Company are in compliance with and have not been and are not in violation of any International Trade Law. The Company has not received any written, or to the Company's Knowledge any verbal, actual or threatened order, notice, or other communication from any Governmental Entity of any actual or potential violation or failure to comply with any International Trade Law. The Company is not conducting or has agreed to conduct any dealings or transaction with or for the benefit of any Sanctioned Person or in violation of Sanctions.

2.24 No Critical Technology. The Company does not engage in the design, fabrication, development, testing, production or manufacture of one or more "critical technologies" within the meaning of the Defense Production Act of 1950, as amended, including all implementing regulations thereof.

2.25 Absence of Unlawful Payments. Neither the Company, nor any its directors or officers, nor to the knowledge of the Company, any employee, agent or other Person acting on behalf of the Company: (a) has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment; made any unlawful expenditures relating to political activity to government officials or others or established or maintained any unlawful or unrecorded funds; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds or violated any provision of the Foreign Corrupt Practices Act; or (c) has accepted or received any unlawful contributions, payments, gifts or expenditures.

2.26 Compliance; Information Statement. The Information Statement seeking the adoption of this Agreement by the stockholders of the Company (including any amendments or supplements thereto and any other document incorporated or referenced therein) and, at the time the Information Statement is first mailed to the stockholders of the Company, the Company cause the information supplied therein not to 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 anything contained herein to the contrary, no representation is made by the Company with respect to statements made in the Information Statement based on information

supplied, or required to be supplied, by or on behalf of Acquiror, Sub or any of their Affiliates specifically for inclusion or incorporation by reference therein.

2.27 Company ASX Documents.

(a) Except as set forth in Section 2.27(a) of the Company Disclosure Letter, the Company has filed with ASX for release on the ASX announcement platform, on a timely basis, all forms, statements, certifications, documents and reports required to be filed by it with ASX for release on the ASX announcement platform on and from July 2, 2018 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, as such statements and reports may have been amended since the date of their filing, the “*Company ASX Documents*”).

(b) Except as set forth in Section 2.27(b) of the Company Disclosure Letter, as of their respective filing dates, or in the case of amendments thereto, as of the last such amendment, the Company ASX Documents complied in all material respects in form and content with the requirements of all Legal Requirements, including the ASX Listing Rules, applicable to such Company ASX Documents, and none of the Company ASX Documents as of such respective dates (or, if amended, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or deceptive.

(c) The consolidated financial statements (including all related notes and schedules) of the Company included in the Company ASX Documents (if amended, as of the date of the last such amendment), (i) fairly present in all material respects, the consolidated financial position of the Company, as at the respective dates thereof, and their consolidated financial performance, their consolidated cash flows for the respective periods then ended and changes in stockholders’ equity for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto, in each case which are not material) and (ii) have been prepared in accordance in all material respects with the GAAP or other applicable accounting standards, as applied on a consistent basis during the periods involved (in each case, except as may be indicated therein or in the notes thereto).

(d) The Company has established and maintains adequate disclosure controls and procedures and internal control over financial reporting. The Company’s disclosure controls and procedures and internal control over financial reporting are reasonably designed to ensure that all material information required to be disclosed by the Company in the reports that it files with the ASX for release on the ASX announcement platform is recorded, processed, summarized and reported within the time periods specified in the ASX Listing Rules, and that all such material information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure. Since July 2, 2018, the Company, or to the knowledge of the Company, any of its directors or officers has not received any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures or methodologies of the Company, or any of its internal accounting controls, including any material complaint, allegation, assertion or claim that the Company, or any of its directors, officers or employees who have a significant role in the Company’s internal control over financial reporting has engaged in questionable accounting or auditing practices.

(e) The Company is in compliance in all material respects with the ASX Listing Rules and has not, since July 2, 2018 through the date hereof, received any notice from the ASX asserting any material noncompliance with such rules and regulations.

2.28 No Other Representations or Warranties. Except for the representations and warranties contained in this Article II, the Company, the Company Securityholders, nor any of their respective Affiliates makes any express or implied representation or warranty with respect to the Company, or any of their Affiliates or with respect to any other information provided, or made available, to Acquiror or any of its Affiliates, agents or representatives in connection with the transactions contemplated hereby. None of the Company, the Company Securityholders, or any of their respective Affiliates or any other Person will have or be subject to any liability or other obligation to Acquiror, its Affiliates, agents or representatives or any Person resulting from any information, documents, projections, forecasts or other material made available to Acquiror, its Affiliates or representatives in certain “data rooms,” confidential offering memorandum, offering materials or management presentations in expectation of the transactions contemplated by this Agreement, unless any such information is expressly and specifically included in a representation or warranty contained in this Article II. The Company disclaims any and all other representations and warranties, whether express or implied.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND SUB

Acquiror represents and warrants to the Company as follows as of the date hereof:

3.1 Organization and Standing. The Acquiror is a California corporation, and its sole shareholder is a US citizen. Sub is a Delaware corporation. Each of Acquiror and Sub is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Neither Acquiror nor Sub is in violation of any of the provisions of their respective certificates or certificate of incorporation, as the case may be, or bylaws, each as amended to date. .

3.2 Authority; Noncontravention.

(a) Each of Acquiror and Sub has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Acquiror and Sub of this Agreement and the consummation by Acquiror and Sub of the transactions contemplated hereby have been duly and validly authorized by the boards of directors of Acquiror and Sub and, effective immediately after the execution of this Agreement by Sub, the sole shareholder of Sub has adopted this Agreement and approved the Merger and the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of Acquiror and Sub and constitutes a valid and binding obligation of Acquiror and Sub enforceable against Acquiror and Sub, respectively, in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy, insolvency, moratorium and other similar Legal Requirements affecting the rights of creditors generally and (ii) Legal Requirements governing specific performance, injunctive relief and other equitable remedies.

(b) The execution and delivery of this Agreement by Acquiror and Sub do not, and neither the consummation of the transactions contemplated hereby nor compliance by Acquiror or Sub with any provisions of this Agreement will, conflict with, or result in any violation of, or default under (i) any provision of their respective certificates of incorporation, as the case may be, or bylaws, as amended to date, or (ii) any Legal Requirement, except where such conflict, violation, default, termination, cancellation or acceleration, individually or in the aggregate, would not be material to Acquiror’s or Sub’s ability to consummate the Merger or to perform their respective obligations under this Agreement.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required by or with respect to Acquiror or Sub in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby,

except for (i) the filing of the Certificate of Merger, as provided in Section 1.5, (ii) such filings as may be required under applicable state securities laws and the securities laws of any foreign country, and (iii) such filings and notifications as may be required to be made in connection with the Merger under the HSR Act or applicable foreign Antitrust Laws and the expiration or early termination of applicable waiting periods under the HSR Act or applicable foreign Antitrust Laws, and (iv) such other consents, authorizations, filings, approvals, notices and registrations which, if not obtained or made, would not be material to Acquiror's or Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement.

3.3 No Prior Sub Operations. Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

3.4 Sufficient Funds. Acquiror has as of the date of this Agreement, and shall have on the Closing Date, sufficient funds to enable Acquiror to consummate the transactions contemplated hereby, including payment of the Merger Consideration and fees and expenses of Acquiror relating to the transactions contemplated hereby. Acquiror's obligations under this Agreement are not subject to any conditions regarding Acquiror's, its Affiliates', or any other Person's ability to obtain financing for the consummation of the transactions contemplated hereby.

3.5 Transaction Fees. Neither Acquiror nor any Affiliate of Acquiror is obligated for the payment of any fees or expenses of any investment banker, broker or finder in connection with the origin, negotiation or execution of this Agreement or in connection with the Merger or any other transaction contemplated by this Agreement.

3.6 Information Statement. Acquiror shall use its reasonable best efforts to cause the information provided by Acquiror or Sub for inclusion in the Information Statement, at the time it is first mailed to the stockholders of the Company or at the time of the Stockholder Consent, not to 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 were made, not misleading.

3.7 No Additional Representations; No Reliance.

(a) Acquiror acknowledges that neither the Company nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company or other matters that is not specifically included in this Agreement (as modified by the Company Disclosure Letter). Without limiting the generality of the foregoing, neither the Company nor any other Person has made a representation or warranty to Acquiror with respect to, and neither the Company nor any other Person, shall be subject to any liability to Acquiror or any other Person resulting from the Company making available to Acquiror, (i) any projections, estimates or budgets for the Company, (ii) any materials, documents or information relating to the Company made available to Acquiror or its counsel, accountants or advisors in the Company's data room or otherwise, or (iii) the information contained in the Confidential Information Memorandum dated October 4, 2023, in each case, except as expressly covered by a representation or warranty set forth in Article II of this Agreement. In connection with Acquiror's investigation of the Company, the Company has delivered, or made available to Acquiror and its respective Affiliates, agents and representatives, certain projections and other forecasts, including but not limited to, projected financial statements, cash flow items and other data of the Company relating to the business of the Company and certain business plan information of the Company. Acquiror acknowledges that there are uncertainties inherent in attempting to make such projections and other forecasts and plans and accordingly is not relying on them, that Acquiror is familiar with such uncertainties, that Acquiror is

taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections and other forecasts and plans so furnished to it, and that Acquiror and its Affiliates, agents and representatives shall have no claim against any Person with respect thereto. Accordingly, Acquiror acknowledges that, without limiting the generality of Section 2.26, neither the Company nor any of their representatives, agents or Affiliates, have made any representation or warranty with respect to such projections and other forecasts and plans.

(b) Notwithstanding anything contained in this Agreement, it is the explicit intent of the parties hereto that the Company is not making any representation or warranty whatsoever, express or implied, beyond those expressly given in Article II of this Agreement, except as expressly provided in Article II of this Agreement and subject to the terms and conditions of Article II of this Agreement, it is understood that Acquiror takes the Company as is and where is with all faults as of the Closing Date with any and all defects.

(c) In furtherance of the foregoing, Acquiror acknowledges that it is not relying on any representation or warranty of the Company, other than those representations and warranties specifically set forth in Article II of this Agreement. Acquiror acknowledges that it has conducted to its satisfaction an independent investigation of the financial condition, liabilities, results of operations and projected operations of the Company and the nature and condition of its properties, assets and businesses and, in making the determination to proceed with the transactions contemplated hereby, has relied solely on the results of its own independent investigation and the representations and warranties set forth in Article II.

ARTICLE IV

ADDITIONAL AGREEMENTS

4.1 Conduct of Business of the Company. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time, except (i) as expressly permitted by the terms of this Agreement, (ii) as disclosed by the Company in the Company Disclosure Letter, (iii) for actions reasonably taken in light of COVID-19, (iv) as required by applicable Legal Requirements, or (v) with the prior written consent of Acquiror (which shall not be unreasonably withheld, conditioned or delayed), the Company will:

- (a) Conduct its business in the ordinary course consistent with past practices; and
- (b) use commercially reasonable efforts to Preserve its relationships with customers and others having business dealings with it.

4.2 Restrictions on Conduct of Business of the Company. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement and the Effective Time, the Company shall not do any of the following (except (i) as expressly permitted by the terms of this Agreement, (ii) as disclosed by the Company in the Company Disclosure Letter, (iii) as required by applicable Legal Requirements, or (iv) with the prior written consent of Acquiror (which shall not be unreasonably withheld, conditioned or delayed)):

- (a) Charter Documents. Cause or permit any amendments to the Company Certificate of Incorporation or the bylaws of the Company;
- (b) Dividends; Changes in Capital Stock. Declare, set aside, or pay any dividend on or make any other distribution (whether in cash, stock or property) in respect of any of any of the Company Capital Stock (or other equity interests), or split, sub-divide, combine or reclassify any of the Company

Capital Stock (or other equity interests) or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock (or other equity interests) other than transmutation between Company Common Stock and Company CDIs, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or other equity interests) except Company Capital Stock from former employees, non-employee directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service as in effect on the Agreement Date;

(c) Issuance of Securities. Issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of any shares of Company Capital Stock (or other equity interests) or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other Contracts of any character obligating it to issue any such shares (or other interest) or other convertible securities, other than: (i) the issuance of shares of Company Capital Stock pursuant to the exercise in accordance with their terms of the Company Options or other rights outstanding as of the Agreement Date; (ii) the repurchase of any shares of Company Capital Stock from former employees, non-employee directors and consultants in accordance with Contracts providing for the repurchase of shares in connection with any termination of service; and (iii) the issue of Company CDIs on transmutation from Company Common Stock;

(d) Dispositions. Sell, lease, license or otherwise dispose of or encumber (other than Permitted Encumbrances) any of its properties or assets, other than sales in the ordinary course of business consistent with its past practice or enter into any Contract with respect to the foregoing;

(e) Indebtedness. Except as required by Legal Requirements or contractual obligations as in effect on the Agreement Date, incur any Indebtedness or guarantee any Indebtedness or issue or sell any debt securities;

(f) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements in excess of the amounts set forth in the Company's 2023 budget made available to Acquiror;

(g) Insurance. Materially change the amount of any insurance coverage naming the Company as a beneficiary or loss payee or allow any such insurance coverage to be cancelled or terminated;

(h) Employee Benefit Plans; Severance; Pay Increases. (i) adopt or amend any employee severance or compensation benefit plan, including any stock issuance or stock option plan, or amend any compensation, benefit, entitlement, grant or award provided or made under any such plan, except in each case as required under ERISA, applicable Legal Requirements or as necessary to maintain the qualified status of such plan under the Code, (ii) pay any bonus to any employee or non-employee director or consultant or increase the salaries, wage rates or fees of its employees or consultants (other than in the ordinary course of business or pursuant to plans, policies or Contracts in effect on the Agreement Date), (iii) hire any individual to be employed by the Company, (iv) loan or advance any money to any present or former director, officer or employee of the Company;

(i) Lawsuits; Settlements. Commence a lawsuit other than (i) for the routine collection of bills, (ii) in such cases where the Company in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of its business, or (iii) for a breach of this Agreement, or voluntarily settle, pay or discharge any lawsuits ongoing as of the Agreement Date that involves payment as damage, settlement, fine or penalties in excess of \$50,000;

(j) Acquisitions. (i) Acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation,

partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to its business, (ii) make any capital contributions or investments (including through loans or advances) in any person or entity, or (iii) create a new subsidiary;

(k) Tax and Accounting. Change accounting methods or practices or revalue any of its assets (including writing down the value of inventory or writing off notes or accounts receivable otherwise than in the ordinary course of business), except in each case as required by changes in GAAP, Legal Requirements or recommended by its independent accountants; make or change any Tax election, change an annual Tax accounting period, adopt or change any Tax accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, affirmatively surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment;

(l) Encumbrances. Except in the ordinary course consistent with past practice, place or allow the creation of any Encumbrance (other than a Permitted Encumbrance) on any material assets of the Company;

(m) Liquidation; Reorganization. Adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company (other than the Merger); or

(n) Material Contract. (i) modify, amend, terminate or waive any rights under any Material Contract in any material respect, or (ii) enter into any new agreement that would have been considered a Material Contract if it were entered into prior to the Agreement Date;

(o) Intellectual Property. Sell, assign, transfer, license, abandon or dispose of any material Intellectual Property, except for non-exclusive licenses of Intellectual Property granted to customers of the Company that are entered into in the ordinary course of business;

(p) Other. Take or agree or otherwise to take, any of the actions described in clauses (a) through (m) in this Section 4.2.

4.3 Preparation of the Information Statement; Stockholder Consent.

(a) Unless this Agreement is terminated pursuant to Section 6.1, (i) the Company shall take all action in accordance with applicable Law, the Company Charter Documents, to distribute the Information Statement and seek the written consent of the Company Common Stock to vote on the adoption of this Agreement (the “**Stockholder Consent**”).

(b) Without limiting the obligations of the Company set out in this Section 4.3 and prior to releasing a copy of the Information Statement on the ASX’s announcement platform, the Company must consult with ASX in relation to the proposed Merger and associated Shareholder Consent and Information Statement. The Company must provide a draft Information Statement (to the extent required by ASX) and timetable for the transactions contemplated under this Agreement (drafted in accordance with Section 10 of Appendix 7A of the ASX Listing Rules) for comment by ASX. The Company must cooperate with ASX and incorporate any comments made by ASX into the Information Statement, timetable and any aforementioned documents (if any) prior to finalizing the timetable.

4.4 Confidentiality; Public Disclosure.

(a) The parties hereto acknowledge that Acquiror and the Company have previously executed a Mutual Nondisclosure Agreement dated October 3, 2023 (the “**Confidentiality Agreement**”) which shall continue in full force and effect in accordance with its terms.

(b) The Company and Acquiror will consult with each other and agree before issuing any press release, making any public statement, or otherwise making any disclosure with respect to the terms of this Agreement or the transactions contemplated hereby or the use of either party’s name, and will not issue any such press release or make any such public statement or other disclosure prior to such mutual agreement, except to the extent necessary in order to comply with applicable Legal Requirements and the ASX Listing Rules or any other listing agreement with a national securities exchange.

4.5 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

4.6 Continuing Employee Benefits. Following the Effective Time, for a period of one year or until termination of the relevant Continuing Employee, Acquiror shall (a) cause the Surviving Corporation (or its respective direct and indirect Subsidiaries) to, continue to pay each Continuing Employee total compensation (including bonuses) that is no less than the current compensation for such Continuing Employee and (b) continue the Company’s current Trinet incentive plan and provide Continuing Employees with employee benefits no less than those currently provided such Continuing Employees pursuant to the Company Employee Plans.

4.7 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration value added and other substantially similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transaction contemplated hereby (collectively, “**Transfer Taxes**”) shall be paid by a Person who is primarily liable for such Tax under applicable Law when due, and such Person shall, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

4.8 Directors’ and Officers’ Insurance.

(a) For a period of six (6) years from and after the Closing Date, Acquiror and the Surviving Corporation agree to indemnify (including advancement of expenses) and hold harmless all past and present officers and directors of the Company to the same extent such persons are indemnified by the Company as of the date of this Agreement pursuant to the Company Certificate of Incorporation, the bylaws of the Company, any applicable employment agreements or indemnification agreements or under applicable Legal Requirements for acts or omissions which occurred at or prior to the Effective Time. The Surviving Corporation’s Certificate of Incorporation and bylaws shall contain provisions with respect to indemnification and exculpation that are at least as favorable to the past and present officers and directors of the Company as those provisions contained in the Company Certificate of Incorporation and the bylaws of the Company in effect on the date hereof, and such provisions shall not be amended, repealed or otherwise modified for a period of six (6) years in any manner that would adversely affect the rights of the past and present officers and directors of the Company.

(b) For a period of six (6) years from and after the Effective Time, each of Acquiror and the Surviving Corporation agrees to provide officers’ and directors’ liability insurance with respect to acts or omissions occurring at or prior to the Effective Time covering each past and present officer and member of the Board of Directors of the Company who is currently covered by the Company’s officers’ and directors’ liability insurance policy. The terms and coverage amounts of the liability insurance policy

shall be at least as favorable as the terms and coverage amounts of the liability insurance policy in effect on the date hereof.

(c) If Acquiror, the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Acquiror or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 4.9.

(d) The provisions of this Section 4.9 are intended for the benefit of, and shall be enforceable by, all past and present officers and directors of the Company and his or her heirs and representatives. The rights of all past and present officers and directors of the Company under this Section 4.9 are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract, applicable Legal Requirements or otherwise.

4.9 Commercially Reasonable Efforts. Subject to the obligations set forth in this Agreement otherwise, each of the parties hereto agrees to use its commercially reasonable efforts, and to cooperate with each other party hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated hereby, including the satisfaction of the respective conditions set forth in Article V, and including to execute and deliver such other instruments and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Merger and the other transactions contemplated hereby.

4.10 No Solicitation. None of the Company, the Company Board, the Special Committee will, or will permit any of the directors, officers, employees, advisors, representatives, stockholders, or agents of the Company to, directly or indirectly, (i) discuss, negotiate, undertake, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired corporation, any transaction involving a merger, consolidation, business combination, purchase or disposition of any amount of the assets of the Company (other than the sale of inventory in the ordinary course of business) or any Capital Stock of the Company other than the transactions contemplated by this Agreement (an “**Acquisition Transaction**”), (ii) willfully facilitate, encourage or solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (iii) furnish or cause to be furnished, to any person or entity, any information concerning the business, operations, properties or assets of the Company in connection with an Acquisition Transaction, or (iv) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other person or entity to do or seek any of the foregoing. Until the earlier of (x) the Closing and (y) the date on which this Agreement is terminated, the Company shall notify Acquiror immediately if any person makes any proposal, offer, inquiry or contact with respect to any of the foregoing. Company shall, and shall cause its directors, officers, employees and representatives to, immediately cease and cause to be terminated any existing discussions or negotiations with any persons (other than Acquiror) conducted heretofore with respect to any Acquisition Transaction.

4.11 Notice of Certain Events. From and after the date of this Agreement until the Effective Time, each of the Company and Acquiror shall promptly notify the other orally and in writing of (a) any change, effect, event, occurrence, development or state of facts that, individually or in the aggregate, would reasonably be expected to cause any condition to the obligations of any party to effect the Merger not to be satisfied, (b) any proceedings commenced or, to any party’s knowledge, threatened against, such party or

any of its affiliates in connection with, arising from or otherwise relating to the Merger, or (c) to such party's knowledge, the failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement which, individually or in the aggregate, would reasonably be expected to result in any condition to the obligations of any party to effect the Merger not to be satisfied; provided that the delivery of any notice pursuant to this Section 6 shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date of this Agreement or otherwise limit or affect the remedies available hereunder to any party

ARTICLE V

CONDITIONS TO THE MERGER

5.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party hereto to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions:

(a) Illegality. No temporary restraining order, preliminary or permanent injunction, order, decree, writ, ruling or award issued by any court or other Governmental Entity of competent authority (including but not limited to, ASX and ASIC) preventing the consummation of the Merger or the other transactions contemplated by this Agreement shall be in effect, and no Legal Requirement shall have been enacted, entered, enforced or deemed applicable to the Merger, which prohibits the consummation of the Merger or the other transactions contemplated by this Agreement (collectively, "**Restraints**").

(b) Regulatory Approvals. Any pre-clearance period or approval required by the Antitrust Laws of the jurisdictions identified on Schedule 5.1(b) shall have been completed or obtained.

(c) Stockholder Approval. The Company shall have obtained the Stockholder Approval in accordance with applicable Legal Requirements and the Stockholder Approval shall be in full force and effect.

(d) ASX Approvals. All waivers, confirmations or approvals required to be obtained from the ASX to facilitate the Merger shall have been obtained (and any conditions imposed by ASX granting its consent have been satisfied).

5.2 Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions (it being understood that each such condition is solely for the benefit of the Company and may be waived by the Company in writing in its sole discretion without notice, liability or obligation to any Person):

(a) Representations and Warranties. The representations and warranties of Acquiror and Sub in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality or "Material Adverse Effect," which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Effective Time as though such representations and warranties were made on and as of such time (except for representations and warranties which address matters only as to a specified date, which representations and warranties shall be so true and correct with respect to such specified date).

(b) Covenants. Acquiror and Sub shall have performed and complied in all material respects with all covenants, obligations and agreements of this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) Receipt of Closing Deliveries. The Company shall have received each of the agreements, instruments and other documents set forth in Section 1.4(a).

5.3 Additional Conditions to the Obligations of Acquiror. The obligations of Acquiror and Sub to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions (it being understood that each such condition is solely for the benefit of Acquiror and Sub and may be waived by Acquiror and Sub in writing in their sole discretion without notice, liability or obligation to any Person):

(a) Representations and Warranties. The representations and warranties of the Company in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified by their terms by a reference to materiality or “Material Adverse Effect”, which representations and warranties as so qualified shall be true and correct in all respects) on and as of the Agreement Date and on and as of the Effective Time as though such representations and warranties were made on and as of such time (except for representations and warranties which address matters only as to a specified date, which representations and warranties shall be so true and correct with respect to such specified date). Notwithstanding the foregoing, (i) the representations and warranties in Section 2.3 (Capital Structure) will be true and correct in all respects (except for de minimis inaccuracies) as of the Agreement Date and, except to the extent any such representation and warranty expressly relates to an earlier date (in which case as of such earlier date), as of the Effective Time; and (ii) the representation contained in Section 2.7 (Absence of Material Adverse Effect), Section 2.23 (International Trade Matters) and Section 2.24 (No Critical Technology) shall be true and correct in all respects as of the Agreement Date and as of the Effective Time.

(b) Covenants. The Company shall have performed and complied in all material respects with all covenants, obligations and agreements of this Agreement required to be performed and complied with by the Company at or prior to the Closing.

(c) Receipt of Closing Deliveries. Acquiror shall have received each of the agreements, instruments and other documents set forth in Section 1.4(b).

(d) No Material Adverse Effect. Since the Agreement Date, there shall not have occurred any Effect which, individually or in the aggregate, has caused a Material Adverse Effect with respect to the Company.

(e) Material Contracts. The Company shall have delivered to Parent all necessary consents, waivers and approvals of parties to any Contract set forth on Schedule 5.3(e).

(f) Termination of Plans. Prior to the Closing, the Company Board shall adopt such resolutions as may be reasonably necessary to terminate the Company Option Plan(s) effective immediately prior to the Effective Time.

ARTICLE VI

TERMINATION, AMENDMENT AND WAIVER

6.1 Termination. At any time prior to the Effective Time, this Agreement may be terminated and the Merger abandoned by authorized action taken by the terminating party (notwithstanding approval and adoption of this Agreement by the Company Stockholders):

(a) by mutual written consent duly authorized by the Company Board and the board of directors of Acquiror;

(b) by either Acquiror or the Company, if the Merger shall not have occurred on or before November 17, 2023 (the “**Outside Date**”); provided, however, (i) the right to terminate this Agreement under this Section 6.1(b) shall not be available to any party whose breach of this Agreement has been the proximate cause of or resulted in the failure of the Merger to occur on or before the Outside Date; and (ii) if the condition set forth in Section 5.1(b) or Section 5.1(d) shall not have been satisfied prior to such date but all the other conditions in Article V have been satisfied or waived (other than those conditions that by their terms are to be satisfied at Closing), then each of Acquiror and the Company may elect to extend the term of this Agreement until a date and time not later than November 24, 2023;

(c) by either Acquiror or the Company, if (i) a Restraint shall be in effect and shall have become final and non-appealable, (ii) the Stockholder Consent (including any adjournments or postponements thereof) shall have concluded and the Stockholder Approvals shall not have been obtained, or (iii) if any party to this Agreement has received any communication from CFIUS that makes any party to the Agreement (not just the Party receiving such communication) believe, in its reasonable judgement, that CFIUS may prohibit, investigate or scrutinize the Merger or the transactions contemplated herein in any manner. For clarity, with respect to this Section 6.1(c)(iii), any party receiving any communication described in this Section 6.1(c)(iii) shall immediately notify other parties regarding such communication in reasonable detail. Parties hereby agree that any termination by any party pursuant to this Section 6.1(c)(iii) will not be considered a breach of any obligation of such party under this Agreement;

(d) by Acquiror, if the Company shall have breached any representation, warranty, covenant or agreement contained herein and such breach shall not have been cured within thirty (30) days after receipt by the Company of written notice of such breach and if not cured within the timeframe above and at or prior to the Closing, such breach would result in the failure of the condition set forth in Section 5.3(a) or (b);

(e) by the Company, if Acquiror or Sub shall have breached any representation, warranty, covenant or agreement contained herein and such breach shall not have been cured within thirty (30) days after receipt by Acquiror of written notice of such breach and if not cured within the timeframe above and at or prior to Closing, such breach would result in the failure of the conditions set forth in Section 5.2(a) or (b); or

In the event of termination by Acquiror or the Company pursuant to this Section 6.1 (other than Section 6.1(a)), written notice thereof shall be given to other parties hereto.

6.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 6.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Acquiror, Sub, the Company or their respective officers, directors, shareholders, Affiliates, employees, agents, advisors, attorneys or representatives; provided, however, that (a) the provisions of Section 4.4 (Confidentiality; Public Disclosure), this Section 6.2 (Effect of Termination), Article VII

(General Provisions) and the Confidentiality Agreement shall remain in full force and effect and survive any termination of this Agreement and (b) no such termination shall relieve any party hereto for any damages incurred or suffered by the other party as a result of an intentional or willful breach of this Agreement.

6.3 Amendment. Subject to the provisions of applicable Legal Requirements, the parties hereto may amend this Agreement by authorized action at any time (notwithstanding approval and adoption of this Agreement by the Company Stockholders) pursuant to an instrument in writing signed on behalf of each of the parties hereto (provided that no amendment shall be made which by Legal Requirement requires further approval by the Company Stockholders without such further shareholder approval). To the extent permitted by applicable Legal Requirements, Acquiror and the Securityholders' Representative may cause this Agreement to be amended at any time after the Effective Time by execution of an instrument in writing signed on behalf of Acquiror and the Securityholders' Representative.

ARTICLE VII

GENERAL PROVISIONS

7.1 Survival of Representations and Warranties. Except in the case of Fraud, the representations and warranties contained in this Agreement and the covenants and agreements contained in this Agreement will expire and be of no further force or effect as of Closing except those covenants and agreements contained herein that by their express terms apply or are to be performed in whole or in part after the Closing. Notwithstanding the foregoing, no Company Securityholder shall be liable for the Fraud of any other Person other than itself and no Company Securityholder shall be liable for such Fraud in excess of the amount Merger Consideration actually received by such Company Securityholder.

7.2 Securityholders' Representative.

(a) Each Company Securityholder by virtue of the approval and adoption of this Agreement or other appointment authorization documentation (other than such Company Stockholders, if any, who have perfected appraisal rights under Delaware Laws) or by accepting any consideration payable hereunder shall be deemed to have agreed to appoint Anzu RBI Mezzanine Preferred GP LLC as its agent and attorney-in-fact (the "***Securityholders' Representative***") for and on behalf of the Company Securityholders to act for the Company Securityholders with regard to matters pertaining to Sections 1.15, 1.16 and Article VII, give and receive notices and communications, object to such payments, agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims, assert, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to, any other claim by Acquiror against any Company Securityholder or by any Company Securityholder against Acquiror or any dispute between Acquiror and any such Company Securityholder, in each case relating to this Agreement or the transactions contemplated hereby and to take all other actions that are either (i) necessary or appropriate in the judgment of the Securityholders' Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement or the Escrow Agreement. Each Company Securityholder agrees to receive correspondence from the Securityholders' Representative, including in electronic form. Such agency may be changed by the Company Securityholders with the right to a majority of the Escrow Amount from time-to-time. Notwithstanding the foregoing, the Securityholders' Representative may resign at any time by providing written notice of intent to resign to the Company Securityholders, which resignation shall be effective upon the earlier of (A) thirty (30) calendar days following delivery of such written notice or (B) the appointment of a successor by the holders of a majority in interest of the Escrow Amount. If the Securityholders' Representative shall be removed, resign or otherwise be unable to fulfill its responsibilities hereunder, the Company Securityholders shall appoint a successor to the Securityholders' Representative, and shall immediately

thereafter notify Acquiror the identity of such successor. Any such successor shall succeed the former the Securityholders' Representative as the Securityholders' Representative hereunder. If for any reason there is no Securityholders' Representative at any time, all references herein to the Securityholders' Representative shall be deemed to refer to the Company Securityholders. No bond shall be required of the Securityholders' Representative, and the Securityholders' Representative shall not receive any compensation for its services. A decision, act, consent or instruction of the Securityholders' Representative, including an amendment, extension or waiver of this Agreement pursuant to its authority hereunder, shall constitute a decision of the Company Securityholders and shall be final, binding and conclusive upon the Company Securityholders.

(b) By executing this Agreement under the heading "Securityholders' Representative," Anzu RBI Mezzanine Preferred GP LLC hereby (i) accepts its appointment and authorization to act as Securityholders' Representative as attorney-in-fact and agent on behalf of the Company Securityholders in accordance with the terms of this Agreement, and (ii) agrees to perform its obligations under, and otherwise comply with, this Section 7.2.

(c) The Securityholders' Representative shall not be liable to any former Company Securityholder for any act done or omitted hereunder as the Securityholders' Representative without gross negligence or willful misconduct or bad faith (and any act done or omitted pursuant to the bona fide good faith advice of counsel, accountants and other professionals and experts retained by the Securityholders' Representative shall be conclusive evidence of good faith). To the fullest extent permitted by applicable Legal Requirements, the Company Securityholders shall severally indemnify the Securityholders' Representative and hold it harmless against any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Securityholders' Representative and arising out of or in connection with the acceptance or administration of its duties hereunder, including any out-of-pocket costs and expenses and legal fees and other legal costs reasonably incurred by the Securityholders' Representative. If not paid directly to the Securityholders' Representative by the Company Securityholders, such losses, liabilities or expenses may be recovered by the Securityholders' Representative from the Reserve (as defined below) and the Escrow Amount otherwise distributable to the Company Securityholders (and not distributed or distributable to Acquiror), pursuant to the terms hereof and of the Escrow Agreement, at the time of distribution, and such recovery will be made from the Company Securityholders according to their respective Pro Rata Share of the Merger Consideration. The Securityholders' Representative shall only have the duties expressly stated in this Agreement and shall have no other duty, express or implied. The Securityholders' Representative shall establish a reserve to be held by the Securityholders' Representative in an amount not to exceed \$25,000 (the "**Reserve**") from the Merger Consideration with respect to the Company Securityholders based upon their Pro Rata Share to fund potential expenses of the Securityholders' Representative in carrying out its authorized duties. The Securityholders' Representative may engage attorneys, accountants, investment bankers, advisors, consultants and clerical personnel and obtain such other professional and expert assistance, and maintain such records, as the Securityholders' Representative may deem necessary or desirable and incur other out-of-pocket expenses related to performing its services hereunder and paid out of the Reserve. The Securityholders' Representative may in good faith rely conclusively upon information, reports, statements and opinions prepared or presented by such professionals, and any action taken by the Securityholders' Representative based on such reliance shall be deemed conclusively to have been taken in good faith. On the date that is three (3) months after Final Merger Consideration is finally determined in accordance with Section 1.15, the Securityholders' Representative shall release all remaining funds held with respect to the Reserve (and not distributed or distributable to the Securityholders' Representative in accordance with this Section 7.2(a)) to the Company Securityholders in accordance with each such Company Securityholder's Pro Rata Share as set forth on the Spreadsheet. No provision of this Agreement or the Escrow Agreement shall require the Securityholders' Representative to expend or risk its own funds or otherwise incur any

financial liability in the exercise or performance of any of its powers, rights, duties or privileges under this Agreement or the Escrow Agreement.

(d) All of the immunities and powers granted to the Securityholders' Representative under this Agreement shall survive the Closing and/or any termination of this Agreement and the Escrow Agreement. The grant of authority provided for in this Section 7.2: (i) is coupled with an interest and shall be irrevocable and survive the death, incompetence, bankruptcy or liquidation of the respective Company Securityholder and shall be binding on any successor thereto and (ii) shall survive the delivery of an assignment by any Company Securityholders of the whole or any fraction of his, her or its interest in the Escrow Amount.

(e) At or prior to the Closing, the Company shall deliver to the Securityholders' Representative a copy of the following documents: (i) the Estimated Merger Consideration Statement, (ii) the Spreadsheet, (iii) the Closing Expenses Certificate, (iv) the Company Indebtedness Certificate, and (v) the Company Cash Certificate.

7.3 Notices. Any notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by a nationally recognized overnight courier service (providing written proof of delivery), such as Federal Express, or mailed by registered or certified mail (return receipt requested and first-class postage prepaid) or sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice, provided that a notice of change in address shall not be deemed to have been given until received by the addressee):

(i) if to Acquiror or Sub, to:

OmegaX, Inc.

20725 Valley Green Dr., Cupertino, CA 95014

Email: info@omegaxinc.com

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

King & Wood Mallesons LLP

2500 Sand Hill Road, Ste. 111

Attention: Yuji Sun

Email: yuji.sun@us.kwm.com

(ii) If to the Securityholders' Representative, to:

Anzu RBI Mezzanine Preferred GP LLC

12610 Race Track Rd

Suite 250

Tampa FL 33626

Email: whs@anzupartners.com, debrah@anzupartners.com

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

DLA Piper LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121
Attention: Martin Nichols
Email: martin.nichols@us.dlapiper.com

7.4 Interpretation. When a reference is made in this Agreement to Articles, Sections or Exhibits, such reference shall be to an Article or Section of, or an Exhibit to this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The phrases “provided to,” “delivered to,” “made available to,” “furnished to,” and phrases of similar import when used herein, unless the context otherwise requires, shall mean that a copy of the information or material referred to has been provided to the party to whom such information or material is to be provided, including by means of being provided for review in the virtual data room set up by the Company in connection with this Agreement located at “<https://americas.datasite.com/platform/container/6340a027c7a2ec6370c54f39/documents/content/index>” Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; and (c) the terms “hereof,” “herein,” “hereunder” and derivative or similar words refer to this entire Agreement.

7.5 Counterparts. This Agreement may be executed manually, by electronic transmission or by facsimile by the parties hereto, in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood that all parties hereto need not sign the same counterpart.

7.6 Entire Agreement; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including all the Exhibits attached hereto and the Schedules, including the Company Disclosure Letter, (a) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof, except for the Confidentiality Agreement, the Escrow Agreement and the Letters of Transmittal, which shall continue in full force and effect, and shall survive any termination of this Agreement, in accordance with their respective terms and (b) are not intended to confer, and shall not be construed as conferring, upon any Person other than the parties hereto any rights or remedies hereunder (except that Section 4.9 is intended to benefit the former, current and future officers and directors of the Company).

7.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void, except that Acquiror may assign this Agreement to any direct or indirect wholly owned subsidiary of Acquiror without the prior consent of the Company; provided, however, that Acquiror shall remain liable for all of its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

7.8 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

7.9 Remedies Cumulative. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party hereto shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party hereto of any one remedy shall not preclude the exercise of any other remedy and nothing in this Agreement shall be deemed a waiver by any party of any right to specific performance or injunctive relief. It is accordingly agreed that the parties, including without limitation, Acquiror, Sub, the Company, or if after the Effective Time, the Securityholders' Representative on behalf of the Company Securityholders, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity, and the parties hereby waive the requirement of any posting of a bond in connection with the remedies described herein.

7.10 Governing Law. This Agreement, and all claims arising hereunder or related thereto, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware without reference to such state's principles of conflicts of law. Each of the parties hereby expressly and irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery in and for New Castle County, or in the event (and only in the event) that such Delaware Court of Chancery does not have subject matter over such dispute, any Delaware State court sitting in New Castle County, unless the federal courts have exclusive jurisdiction, in which case the federal courts located in New Castle County in the State of Delaware (collectively, the "*Specified Courts*"), preserving, however, all rights of removal to such federal court under 28 U.S.C. 1441, in respect of all disputes arising out of or in connection with this Agreement and the documents referred to in this Agreement or the transactions contemplated hereby and thereby, and hereby waives, and agrees not to assert, as a defense in any action, suit or proceeding arising out of or in connection with this Agreement and the documents referred to in this Agreement or the transactions contemplated hereby and thereby, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in the Specified Courts. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 7.3 or in such other manner as may be permitted by applicable Legal Requirements, shall be valid and sufficient service thereof. Notwithstanding the foregoing, each party agrees that each of the other parties shall have the right to bring any action or proceeding for enforcement of any order or judgment entered by a Delaware Court in any other court having jurisdiction.

7.11 Rules of Construction. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, each Schedule and each Exhibit attached hereto, the application of any Legal Requirement, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

7.12 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF

COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

7.13 Waiver of Conflicts. Each of the parties hereto acknowledges and agrees, on its own behalf and on behalf of its directors, stockholders, partners, officers, employees, and Affiliates that the Company is the client of DLA Piper LLP (US) (“**Firm**”), and not any of its individual Company Securityholders. After the Closing, it is possible that Firm will represent the Company Securityholders, the Securityholders’ Representative and their respective Affiliates (individually and collectively, the “**Seller Group**”) in connection with the transactions contemplated herein or in the Escrow Agreement, the Escrow Amount and any claims made thereunder pursuant to this Agreement or the Escrow Agreement. Acquiror and the Company hereby agree that the Firm (or any successor) may represent the Seller Group in the future in connection with issues that may arise under this Agreement or the Escrow Agreement, the administration of the Escrow Amount and any claims that may be made thereunder pursuant to this Agreement or the Escrow Agreement. The Firm (or any successor) may serve as counsel to all or a portion of the Seller Group or any director, stockholder, partner, officer, employee, representative, or Affiliate of the Seller Group, in connection with any litigation, claim or obligation arising out of or relating to this Agreement, the Escrow Agreement, or the transactions contemplated by this Agreement or the Escrow Agreement. Each of the parties hereto consents thereto, and waives any conflict of interest arising therefrom, and each such party shall cause any Affiliate thereof to consent to waive any conflict of interest arising from such representation. Each of the parties hereto acknowledges that such consent and waiver is voluntary, that it has been carefully considered, and that the parties have consulted with counsel or have been advised they should do so in this connection. Communications between the Company and the Firm will become the property of the Securityholders’ Representative and the Company Securityholders stockholders following closing and will not be disclosed to Acquiror without the consent of the Securityholders’ Representative.

7.14 Attorney-Client Privilege. Notwithstanding the Merger, Acquiror and the Company agree that neither the Company nor Acquiror shall have the right to assert the attorney-client privilege as to pre-closing and post-closing communications between the Company Securityholders or the Company (for the Company, only with respect to pre-Closing communications), on one hand, and its counsel, the Firm, on the other hand, to the extent that the privileged communications relate to this Agreement or any of the ancillary agreements or to the transactions contemplated hereby. The parties agree that only the Company Securityholders shall be entitled to assert or waive such attorney-client privilege in connection with such communications following the Closing. The files generated and maintained by the Firm as a result of the Firm’s representation of the Company in connection with this Agreement or any of the ancillary agreements or any of the transactions contemplated hereby shall be and become the exclusive property of the Company Securityholders and shall be segregated from the Firm’s files related to all other elements of its representation of the Company prior to the Closing (which shall remain the property of the Company). The attorney-client privilege may be waived on behalf of the Company Securityholders only by the Securityholders’ Representative. The foregoing shall not extend to (a) any communication unrelated to this Agreement, any of the ancillary agreements or the transactions contemplated hereby, (b) communications between the Company Securityholders or the Company, on the one hand, and any Person other than the Firm, on the other hand, or (c) any post-Closing communications between the Company and the Firm or any other legal counsel.

[Signature Page Next]

IN WITNESS WHEREOF, Acquiror, Sub and the Company have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized, all as of the date first written above.

OMEGAX, INC.

By: _____
Name: _____
Title: _____

OMEGAX MERGER SUB, INC.

By: _____
Name: _____
Title: _____

PIVOTAL SYSTEMS CORPORATION

By: _____
Name: _____
Title: _____

APPOINTMENT AND DUTIES
ACCEPTED AND AGREED:

**SECURITYHOLDERS' REPRESENTATIVE SOLELY IN
ITS CAPACITY AS THE SECURITYHOLDERS'
REPRESENTATIVE) WITH RESPECT TO
SECTIONS 1.15, 1.16 AND ARTICLE VII HEREOF**

ANZU RBI MEZZANINE PREFERRED GP LLC

By: _____
Name: _____

Annex B

Stockholder Consent

[see attached]

**ACTION BY WRITTEN CONSENT
OF THE STOCKHOLDERS
OF
PIVOTAL SYSTEMS CORPORATION**
(a Delaware Corporation)

November 9, 2023

The undersigned stockholders of Pivotal Systems Corporation, a Delaware corporation (the “**Company**”), including (1) the holders of a majority of the Company Preferred Stock voting together as a combined single class, and (2) the holders of a majority of the outstanding shares of Company Common Stock, including shares of Company Common Stock represented by Company CHES Depositary Interests (“**CDIs**”) (which shall be voted by CHES Depositary Nominees Pty Ltd (the “**Depositary**”) in accordance with the voting instructions of holders of Company CDIs), entitled to vote, do hereby consent to and approve the adoption of the following recitals and resolutions, without a meeting, pursuant to Section 228 of the Delaware General Corporation Law (the “**DGCL**”) and the bylaws of the Company, effective as of the date first set forth above.

1. Approval of Agreement and Plan of Merger

WHEREAS, the Board of Directors of the Company (the “**Board**”) (a) determined that it is advisable and fair to, and in the best interests of, the Company and its stockholders for the Company to enter into that certain Agreement and Plan of Merger, in substantially the form attached hereto as Exhibit A (the “**Merger Agreement**”), by and among the Company, OmegaX, Inc., a California corporation (“**Acquiror**”), OmegaX Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Acquiror (“**Merger Sub**”), and Anzu RBI Mezzanine Preferred GP LLC as the Securityholders’ Representative (as defined in the Merger Agreement), (b) approved the transactions contemplated by the Merger Agreement (the “**Transactions**”), including, without limitation, the Merger (as defined below), and authorized the officers of the Company to execute and deliver the Merger Agreement upon the terms and conditions set forth therein, and (c) recommended that the stockholders of the Company approve and adopt the Merger Agreement and approve the Transactions (with such changes to the Merger Agreement as an authorized officer of the Company shall approve, such approval to be evidenced conclusively by such authorized officer’s execution thereof). Capitalized terms used but not defined herein shall have the meanings set forth in the Merger Agreement.

WHEREAS, pursuant to the terms of the Merger Agreement, Sub will merge with and into the Company, with the Company being the surviving corporation, in accordance with applicable law (the “**Merger**”).

WHEREAS, the Merger will be consummated by filing a Certificate of Merger for the Merger (the “**Certificate of Merger**”) with the Secretary of State of the State of Delaware.

NOW, THEREFORE BE IT RESOLVED, that the undersigned stockholders adopt and approve the execution, delivery and performance of the Merger Agreement and the Transactions.

RESOLVED FURTHER, that the terms and conditions of the Merger Agreement and the other transaction documents and agreements, and the transactions and agreements contemplated thereby and attached thereto, including, without limitation, the deposit of the Escrow Amount with the Escrow Agent and the deposit of the Reserve with the Securityholders’ Representative, are hereby

authorized, approved and adopted effective and conditioned upon the valid execution of the Merger Agreement by the parties thereto.

RESOLVED FURTHER, that each of the undersigned stockholders hereby acknowledges and agrees that the consideration payable to such stockholder in the Merger pursuant to the Merger Agreement is fair and reasonable to the Company and its stockholders and is approved as full satisfaction with respect to the undersigned's shares of capital stock.

RESOLVED FURTHER, that all lawful acts and deeds heretofore done or lawful actions taken by any director or officer of the Company in entering into, executing, acknowledging or attesting to any arrangements, agreements, instruments or documents in carrying out the terms and intentions of the foregoing resolutions are hereby ratified, confirmed and approved.

2. Waiver of Notice

RESOLVED, that, each undersigned stockholder hereby waives any and all rights to receive advance notice with respect to this action by Written Consent, including the notice or consent requirements applicable to, or triggered by, the Transactions, the Merger Agreement, the other transaction documents and agreements and any of the transactions contemplated therein that are contained in the Certificate of Incorporation or bylaws of the Company, as may be amended from time to time, in any contract between the Company and any of the undersigned stockholders.

3. Appointment of Securityholders' Representative

RESOLVED, that the appointment of Anzu RBI Mezzanine Preferred GP LLC, as the Securityholders' Representative in connection with the Transactions, including as agent, proxy, and attorney-in-fact for all the Company Securityholders for all purposes under the Merger Agreement in accordance with the terms and provisions of the Merger Agreement be, and hereby is, approved.

RESOLVED FURTHER, that the undersigned stockholders hereby acknowledge and agree, subject to the terms and conditions of the Merger Agreement, (a) to the extent set forth in the Merger Agreement, to indemnify, defend and hold harmless the Securityholders' Representative from and against any and all loss, liability, claim, damage, fine, judgment, amount paid in settlement or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Securityholders' Representative and arising out of or in connection with the Securityholders' Representative's execution and performance of the Merger Agreement and any agreements ancillary thereto, in each case, as such loss, liability, claim, damage, fine, judgment, amount paid in settlement or expense incurred is suffered or incurred; and (b) that the Securityholders' Representative shall not be liable to any Company Securityholders for any act done or omitted thereunder as Securityholders' Representative absent gross negligence or willful misconduct.

4. Waiver of Appraisal Rights

RESOLVED, that each of the undersigned stockholders hereby affirmatively waives and agrees not to exercise any rights to dissent with respect to the Merger or request appraisal (or quasi-appraisal or similar equitable remedies) of any of the shares of capital stock or any similar right the undersigned stockholder may have pursuant to or under applicable law, including, without limitation, Section 262 of the Delaware General Corporation Law or any applicable Law in connection with the Merger and other Transactions.

5. **Interested Party Transactions**

WHEREAS, pursuant to Section 144 of the Delaware General Corporate Law, no contract or transaction between the Company and any other corporation, partnership, association or other organization in which one or more of the officers or directors of the Company is an officer or director of, or has a financial interest in (any such party is referred to herein individually as an “**Interested Party**,” or collectively as the “**Interested Parties**,” and any such contract or transaction is referred to herein as an “**Interested Party Transaction**”), shall be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the Board which authorized the Interested Party Transaction or solely because the vote of any such director is counted for such purpose, if: (i) the material facts as to the director’s or officer’s relationship or interest and as to the contract or transaction are disclosed or are known to the Board, and the Board in good faith authorizes the contract or transaction by affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, (ii) the material facts as to the director’s or officer’s relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders, or (iii) the contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified by the Board or the stockholders.

WHEREAS, it is hereby disclosed and made known to the undersigned that Kevin Hill (a director and officer of the Company) (a) will continue employment with the combined company, and (b) will receive a payment of \$350,000 in conjunction with the 2022 Bonus Plan approved by the Board originally on October 28, 2022 and then extended without modification by the Board on October 27, 2023.

WHEREAS, it is hereby disclosed and made known to the undersigned that Dr. Joseph Monkowski (a director and officer of the Company) (a) is a stockholder of the Company and will receive proceeds as a result of the the Transactions akin to the other stockholders of the Company and (b) will continue employment with the company.

WHEREAS, it is hereby disclosed and made known to the undersigned that Ron Warrington (an officer of the Company) (a) will continue employment with the combined company, and (b) will receive a payment of \$250,000 in conjunction with the 2022 Bonus Plan approved by the Board originally on October 28, 2022 and then extended without modification by the Board on October 27, 2023.

WHEREAS, it is hereby disclosed and made known to the undersigned that David Michael (a director of the Company) is a member of the General Partner of each of Anzu Industrial Capital Partners LP, AICP I Limited and Anzu Industrial Fund I Annex LP, which collectively own approximately 34.8% of the Company’s outstanding Common Stock and will receive approximately \$17,400 as a result of the Transactions, and hold a promissory note from the Company in the principal amount of \$200,000 that will be repaid approximately in the amount of \$206,000 (including additional cash repayment amount) in connection with the transactions contemplated by the Merger Agreement.

WHEREAS, it is hereby disclosed and made known to the undersigned that Mr. Michael is also a member of Anzu RBI Mezzanine Preferred LLC, which owns all of the Company’s outstanding Preferred Stock, approximately 13.9% of the Company’s outstanding Common Stock, and will receive approximately \$6,950 as a result of the Transactions, and holds a promissory note from the Company in the principal amount of approximately \$411,000 that will be repaid in the amount of

\$1,200,000 (including additional cash repayment amount) in connection with the transactions contemplated by the Merger Agreement.

WHEREAS, it is hereby disclosed and made known to the undersigned that Kevin Landis, a non-executive director of the Company, is the nominee of Firsthand Venture Investors to the Company Board and is the CEO and CIO of Firsthand Capital Management, the investment adviser to Firsthand Technology Value Fund, Inc., which is a substantial shareholder holding approximately 5.38% of the Company's outstanding Common Stock (including shares of Company Common Stock represented by CDIs) and will receive approximately \$2,900 as a result of the the Transactions;

WHEREAS, each of the undersigned is aware of the material facts related to the Interested Party Transaction and has had an adequate opportunity to ask questions regarding, and investigate the nature of, the relationships and/or interests of the Interested Parties with and in the Company in connection with the Interested Party Transaction.

WHEREAS, each of the undersigned, after careful consideration, and being fully aware of certain directors' interests in the Interested Party Transaction, believes in good faith that the Merger Agreement and the transactions contemplated thereby to be just, reasonable and in the best interests of the Company and its stockholders.

NOW, THEREFORE, BE IT RESOLVED, that the stockholders, having been fully apprised of all of the material facts relevant to the potential Interested Party Transaction, and having carefully considered the alternatives available to the Company at this time, hereby determine that the Merger Agreement and the Transactions contemplated thereby are (i) fair and reasonable as to the Company and its stockholders, and (ii) advisable and in the best interests of the Company and its stockholders, and hereby authorize and approve the Merger Agreement and the Transactions contemplated thereby in all respects, notwithstanding the fact that it may be deemed an Interested Party Transaction.

6. General Authority and Ratification

RESOLVED, that any and all lawful acts, transactions, agreements, instruments, documents or certificates heretofore or hereafter taken or executed by the officers of the Company in furtherance of the foregoing be, and they hereby are, in all respects approved and ratified and confirmed as the true acts and deeds of the Company with the same force and effect as if such lawful act, transaction, agreement or certificate had been specifically authorized in advance by resolution of the stockholders of the Company.

RESOLVED FURTHER, that the appropriate officers of the Company be, and each of them singly hereby is, authorized in the name and on behalf of the Company to execute and deliver any and all agreements, instruments, documents and certificates and to take any and all actions which they or any one of them may deem necessary, appropriate or desirable in connection with or in furtherance of the actions contemplated by the foregoing resolutions, and that the execution and delivery of such agreements, instruments, documents and certificates and the taking of such actions, by such officer or officers shall be conclusive evidence of his determination and the approval of the stockholders of the Company.

[Signature Page Follows]

In witness whereof, by executing this Action by Written Consent, each undersigned stockholder is giving written consent with respect to all shares of the capital stock of the Company held by such stockholder. This Action by Written Consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Any copy, facsimile or other reliable reproduction of this action may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This written consent shall be filed in the minute book of the Company and shall be effective for all purposes as of the date written below each stockholder's name.

STOCKHOLDER:

**[FOR ENTITY STOCKHOLDER USE THE
FOLLOWING SIGNATURE BLOCK:]**

**[FOR INDIVIDUAL STOCKHOLDER USE
THE FOLLOWING SIGNATURE BLOCK:]**

Entity: _____
[PRINT ENTITY ON LINE]

Name: _____
[PRINT NAME ON LINE]

By: _____
[SIGN HERE]

By: _____
[SIGN HERE]

Name: _____
[PRINT NAME ON LINE]

Title: _____
[PRINT TITLE ON LINE]

EXHIBIT A
FORM OF MERGER AGREEMENT

[see attached]

Annex C

Section 262 of the Delaware General Corporations Law

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger, consolidation, conversion, transfer, domestication or continuance nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository; the words "beneficial owner" mean a person who is the beneficial owner of shares of stock held either in voting trust or by a nominee on behalf of such person; and the word "person" means any individual, corporation, partnership, unincorporated association or other entity.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent, converting, transferring, domesticating or continuing corporation in a merger, consolidation, conversion, transfer, domestication or continuance to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263, § 264, § 266 or § 390 of this title (other than, in each case and solely with respect to a converted or domesticated corporation, a merger, consolidation, conversion, transfer, domestication or continuance authorized pursuant to and in accordance with the provisions of § 265 or § 388 of this title):

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders, or at the record date fixed to determine the stockholders entitled to consent pursuant to § 228 of this title, to act upon the agreement of merger or consolidation or the resolution providing for the conversion, transfer, domestication or continuance (or, in the case of a merger pursuant to § 251(h) of this title, as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent, converting, transferring, domesticating or continuing corporation if the holders thereof are required by the terms of an agreement of merger or consolidation, or by the terms of a resolution providing for conversion, transfer, domestication or continuance, pursuant to § 251, § 252, § 254, § 255, § 256, § 257, § 258, § 263, § 264, § 266 or § 390 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or of the converted entity or the entity resulting from a transfer, domestication or continuance if such entity is a corporation as a result of the conversion, transfer, domestication or continuance, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger, consolidation, conversion, transfer, domestication or continuance will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) [Repealed.]

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation, the sale of all or substantially all of the assets of the corporation or a conversion effected pursuant to § 266 of this title or a transfer, domestication or continuance effected pursuant to § 390 of this title. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger, consolidation, conversion, transfer, domestication or continuance for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations or the converting, transferring, domesticating or continuing corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the converting corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and, § 114 of this title, if applicable) may be accessed without subscription or cost. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger, consolidation, conversion, transfer, domestication or continuance, a written demand for appraisal of such stockholder's shares; provided that a demand may be delivered to the corporation by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger, consolidation, conversion, transfer, domestication or continuance shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger, consolidation, conversion, transfer, domestication or continuance, the surviving, resulting or converted entity shall notify each stockholder of each constituent or converting, transferring, domesticating or continuing corporation who has complied with this subsection and has not voted in favor of or consented to the merger, consolidation, conversion,

transfer, domestication or continuance, and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section, of the date that the merger, consolidation or conversion has become effective; or

(2) If the merger, consolidation, conversion, transfer, domestication or continuance was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent, converting, transferring, domesticating or continuing corporation before the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, or the surviving, resulting or converted entity within 10 days after such effective date, shall notify each stockholder of any class or series of stock of such constituent, converting, transferring, domesticating or continuing corporation who is entitled to appraisal rights of the approval of the merger, consolidation, conversion, transfer, domestication or continuance and that appraisal rights are available for any or all shares of such class or series of stock of such constituent, converting, transferring, domesticating or continuing corporation, and shall include in such notice either a copy of this section (and, if 1 of the constituent corporations or the converting, transferring, domesticating or continuing corporation is a nonstock corporation, a copy of § 114 of this title) or information directing the stockholders to a publicly available electronic resource at which this section (and § 114 of this title, if applicable) may be accessed without subscription or cost. Such notice may, and, if given on or after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, shall, also notify such stockholders of the effective date of the merger, consolidation, conversion, transfer, domestication or continuance. Any stockholder entitled to appraisal rights may, within 20 days after the date of giving such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of giving such notice, demand in writing from the surviving, resulting or converted entity the appraisal of such holder's shares; provided that a demand may be delivered to such entity by electronic transmission if directed to an information processing system (if any) expressly designated for that purpose in such notice. Such demand will be sufficient if it reasonably informs such entity of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, either (i) each such constituent corporation or the converting, transferring, domesticating or continuing corporation shall send a second notice before the effective date of the merger, consolidation, conversion, transfer, domestication or continuance notifying each of the holders of any class or series of stock of such constituent, converting, transferring, domesticating or continuing corporation that are entitled to appraisal rights of the effective date of the merger, consolidation, conversion, transfer, domestication or continuance or (ii) the surviving, resulting or converted entity shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection and any beneficial owner who has demanded appraisal under paragraph (d)(3) of this section. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation or entity that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation or the converting, transferring, domesticating or continuing corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the

record date shall be the close of business on the day next preceding the day on which the notice is given.

(3) Notwithstanding subsection (a) of this section (but subject to this paragraph (d)(3)), a beneficial owner may, in such person's name, demand in writing an appraisal of such beneficial owner's shares in accordance with either paragraph (d)(1) or (2) of this section, as applicable; provided that (i) such beneficial owner continuously owns such shares through the effective date of the merger, consolidation, conversion, transfer, domestication or continuance and otherwise satisfies the requirements applicable to a stockholder under the first sentence of subsection (a) of this section and (ii) the demand made by such beneficial owner reasonably identifies the holder of record of the shares for which the demand is made, is accompanied by documentary evidence of such beneficial owner's beneficial ownership of stock and a statement that such documentary evidence is a true and correct copy of what it purports to be, and provides an address at which such beneficial owner consents to receive notices given by the surviving, resulting or converted entity hereunder and to be set forth on the verified list required by subsection (f) of this section.

(e) Within 120 days after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, the surviving, resulting or converted entity, or any person who has complied with subsections (a) and (d) of this section and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, any person entitled to appraisal rights who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, consolidation, conversion, transfer, domestication or continuance. Within 120 days after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, any person who has complied with the requirements of subsections (a) and (d) of this section, upon request given in writing (or by electronic transmission directed to an information processing system (if any) expressly designated for that purpose in the notice of appraisal), shall be entitled to receive from the surviving, resulting or converted entity a statement setting forth the aggregate number of shares not voted in favor of the merger, consolidation, conversion, transfer, domestication or continuance (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2) of this title)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of stockholders or beneficial owners holding or owning such shares (provided that, where a beneficial owner makes a demand pursuant to paragraph (d)(3) of this section, the record holder of such shares shall not be considered a separate stockholder holding such shares for purposes of such aggregate number). Such statement shall be given to the person within 10 days after such person's request for such a statement is received by the surviving, resulting or converted entity or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section, whichever is later.

(f) Upon the filing of any such petition by any person other than the surviving, resulting or converted entity, service of a copy thereof shall be made upon such entity, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all persons who have demanded appraisal for their shares and with whom agreements as to the value of their shares have not been reached by such entity. If the petition shall be filed by the surviving, resulting or converted entity, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving, resulting

or converted entity and to the persons shown on the list at the addresses therein stated. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving, resulting or converted entity.

(g) At the hearing on such petition, the Court shall determine the persons who have complied with this section and who have become entitled to appraisal rights. The Court may require the persons who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any person fails to comply with such direction, the Court may dismiss the proceedings as to such person. If immediately before the merger, consolidation, conversion, transfer, domestication or continuance the shares of the class or series of stock of the constituent, converting, transferring, domesticating or continuing corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger, consolidation, conversion, transfer, domestication or continuance for such total number of shares exceeds \$1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the persons entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, consolidation, conversion, transfer, domestication or continuance, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger, consolidation, conversion, transfer, domestication or continuance through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger, consolidation or conversion and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving, resulting or converted entity may pay to each person entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving, resulting or converted entity or by any person entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the persons entitled to an appraisal. Any person whose name appears on the list filed by the surviving, resulting or converted entity pursuant to subsection (f) of this section may participate fully in all proceedings until it is finally determined that such person is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving, resulting or converted entity to the persons entitled thereto. Payment shall be so made to each such person upon such terms and conditions as the Court may order. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving, resulting or converted entity be an entity of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a person whose name appears on the list filed by the surviving, resulting or converted entity pursuant to subsection (f) of this section who participated in the proceeding and incurred expenses in connection therewith, the Court may order all or a portion

of such expenses, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal not dismissed pursuant to subsection (k) of this section or subject to such an award pursuant to a reservation of jurisdiction under subsection (k) of this section.

(k) Subject to the remainder of this subsection, from and after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, no person who has demanded appraisal rights with respect to some or all of such person's shares as provided in subsection (d) of this section shall be entitled to vote such shares for any purpose or to receive payment of dividends or other distributions on such shares (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger, consolidation, conversion, transfer, domestication or continuance). If a person who has made a demand for an appraisal in accordance with this section shall deliver to the surviving, resulting or converted entity a written withdrawal of such person's demand for an appraisal in respect of some or all of such person's shares in accordance with subsection (e) of this section, either within 60 days after such effective date or thereafter with the written approval of the corporation, then the right of such person to an appraisal of the shares subject to the withdrawal shall cease. Notwithstanding the foregoing, an appraisal proceeding in the Court of Chancery shall not be dismissed as to any person without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just, including without limitation, a reservation of jurisdiction for any application to the Court made under subsection (j) of this section; provided, however that this provision shall not affect the right of any person who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such person's demand for appraisal and to accept the terms offered upon the merger, consolidation, conversion, transfer, domestication or continuance within 60 days after the effective date of the merger, consolidation, conversion, transfer, domestication or continuance, as set forth in subsection (e) of this section. If a petition for an appraisal is not filed within the time provided in subsection (e) of this section, the right to appraisal with respect to all shares shall cease.

(l) The shares or other equity interests of the surviving, resulting or converted entity to which the shares of stock subject to appraisal under this section would have otherwise converted but for an appraisal demand made in accordance with this section shall have the status of authorized but not outstanding shares of stock or other equity interests of the surviving, resulting or converted entity, unless and until the person that has demanded appraisal is no longer entitled to appraisal pursuant to this section.