

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM 8-K**

**CURRENT REPORT**

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

April 30, 2025  
(Date of earliest event reported)

**APPLIED DIGITAL CORPORATION**

(Exact name of registrant as specified in its charter)

**Nevada**  
(State or other jurisdiction  
of incorporation)

**001-31968**  
(Commission  
File Number)

**95-4863690**  
(IRS Employer  
Identification No.)

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

**75219**  
(Zip Code)

**214-427-1704**  
(Registrant's telephone number, including area code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

☐ Emerging growth company

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	APLD	Nasdaq Global Select Market

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

On April 30, 2025, Applied Digital Corporation, a Nevada corporation (the "Company") entered into a preferred equity purchase agreement (the "PEPA") with the investors signatory thereto (the "Investors"). Under the PEPA, the Company has the right to put up to \$150 million (the "Commitment Amount") of shares of the Company's newly designated Series G Convertible Preferred Stock, par value \$0.001 per share (the "Series G Preferred Stock") to the Investors, subject to certain conditions and limitations. The shares of the Series G Preferred Stock may be put from time to time at the Company's discretion during the period commencing on April 30, 2025 (the "Commitment Date") and terminating on the earlier of (i) the 36-month anniversary of the Commitment Date or (ii) such date as there ceases to be a sufficient number of authorized but unissued shares of common stock of the Company, par value \$0.001 (the "Common Stock") remaining under the Exchange Cap (as defined below). Sales of the Series G Preferred Stock will be made to the Investors at a purchase price of \$1,000 per share, subject to an original issue discount of 4%. Northland Securities, Inc. acted as the placement agent and will receive fees in an amount equal to 3% of the gross transaction amount.

The Company's put right may be exercised in increments of \$25 million, up to an initial limit of \$75 million. The initial limit will automatically increase by an incremental \$25 million, for a maximum of the Commitment Amount, on each of the 10<sup>th</sup>, 40<sup>th</sup> and 70<sup>th</sup> days after the date on which a registration statement covering the resale of the shares of Common Stock underlying the Series G Preferred Stock is declared effective by the U.S. Securities and Exchange Commission (such date, the "Registration Effective Date"). Pursuant to the PEPA, the shares of Common Stock issuable upon conversion of the Series G Preferred Stock are required to be registered for resale as soon as practicable after June 2, 2025, but in no case later than June 9, 2025 (subject to certain exceptions).

The Series G Preferred Stock becomes convertible upon the earlier of (i) 45 days after the first issuance date of the Series G Preferred Stock and (ii) the Registration Effective Date. Conversion of the Series G Preferred Stock will be subject to a customary 4.99% beneficial ownership limitation, as well as a 19.99% conversion limitation pursuant to the applicable Nasdaq Listing Rules (the "Exchange Cap").

On each conversion date, the conversion price for the Series G Preferred Stock being converted (the “Conversion Price”) will equal the greater of (i) 95% of the lowest daily Volume Weighted Average Price for each of the five trading days immediately preceding the conversion date and (ii) the initial floor price of \$4.25, which may be reduced by the Company at any time in its sole discretion, but in no event below \$1.34 (as may be adjusted from time to time, the “Floor Price”). Based on its initial stated value of \$1,000 per share and the \$4.25 initial Floor Price, each share of Series G Preferred Stock would be convertible into an aggregate of 236 shares of Common Stock. No right of conversion may be exercised by the Investors in excess of \$30 million of stated value, in the aggregate, per month, unless otherwise mutually agreed in writing by the Company and the holders holding a majority of the voting power of the Series G Preferred Stock outstanding at the time.

The Company filed the Certificate of Designation (as defined below) with the Secretary of State of the State of Nevada on April 30, 2025. The summary of the material terms of the Series G Preferred Stock set forth below in “Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year” is incorporated by reference into this Item 1.01 in its entirety.

The PEPA contains customary representations, warranties and agreements by the Company, indemnification obligations of the Company and the Investors, including for liabilities under the Securities Act of 1933, as amended (the “Securities Act”), and other obligations of the parties.

The foregoing description of the PEPA is qualified in its entirety by reference to the full text of the PEPA, a form of which is attached hereto as Exhibit 10.1 and is incorporated in its entirety herein by reference. The representations, warranties and covenants contained in the PEPA were made only for purposes of such agreement and as of a date specified therein, as applicable, are solely for the benefit of the parties to such agreement and may be subject to limitations agreed upon by the contracting parties.

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#### **Item 1.02 Termination of a Material Definitive Agreement.**

In connection with entering into the PEPA described in Item 1.01 of this Current Report on Form 8-K, on April 30, 2025, the Company delivered a notice terminating its existing Standby Equity Purchase Agreement, dated as of August 28, 2024, as amended, with YA II PN, LTD. (the “SEPA”), effective May 7, 2025. The Company did not issue any shares of Common Stock pursuant to the SEPA and incurred no early termination penalties in connection with the termination of the SEPA.

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

The offer and sale of the Series G Preferred Stock pursuant to the PEPA, and the shares of Common Stock issuable upon the conversion of the Series G Preferred Stock, is and will be made in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act.

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

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

On April 30, 2025, the Company filed a Certificate of the Designations, Powers, Preferences and Rights of Series G Convertible Preferred Stock with the Secretary of State of the State of Nevada designating 156,000 shares out of the authorized but unissued shares of its preferred stock as Series G Preferred Stock with a stated value of \$1,000 per share (the “Certificate of Designation”). The following is a summary of the principal terms of the Series G Preferred Stock as set forth in the Certificate of Designation:

Series G Preferred Stock will rank on parity with the Company’s Series E Redeemable Preferred Stock, par value \$0.001 per share and the Company’s Series E-1 Preferred Stock, par value \$0.001 per share, and may rank on parity with or senior to any other series of preferred stock issued by the Company from time to time in the future. The Series G Preferred Stock will rank senior to the Common Stock.

Upon any dissolution, liquidation or winding up, whether voluntary or involuntary, holders of the Series G Preferred Stock will be entitled to receive distributions out of the assets of the Company in an amount per share equal to the then-current Series G stated value, whether capital or surplus, before any distributions shall be made on any shares of the Common Stock.

The Series G Preferred Stock has no voting rights, except as required by law and for certain customary protective provisions.

If any Investor is prevented from converting any portion of its Series G Preferred Stock because of the Exchange Cap, and such limitation continues for 18 months following the date that is 18 months following the issuance of such Series G Preferred Stock, or, if earlier, the date that is 36 months following the Commitment Date, then the portion of the Series G Preferred Stock held by such Investor at such time shall be redeemed by the Company, within 10 trading days after such earlier date, at a price equal to the greater of (A) the product of (x) the Conversion Price in effect on the first (1st) date this limitation prohibited conversion thereof and (y) the number of shares of Common Stock into which such Series G Preferred Stock that was not converted is convertible at such Conversion Price (without regard to any limitations on conversion), and (B) 110% of the stated value of such Series G Preferred Stock.

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If, (i) the Volume Weighted Average Price (as defined in the Certificate of Designation) for any trading day falls below the Floor Price, as may be adjusted from time to time, and then remains below the Floor Price for 10 consecutive trading days (which 10 consecutive trading day period shall not include any days prior to the original issuance date of the applicable Series G Preferred Stock) and (ii) the Company does not elect to reduce the Floor Price ((i) and (ii) collectively, the “VWAP Limitation”), and while such VWAP Limitation exists an Investor delivers a Notice of Conversion, then in lieu of effecting such conversion, the Company shall redeem such Series G Preferred Stock and pay to such Investor, on a monthly basis beginning on the 1st day of the 1st month following the date of conversion in respect of such Notice of Conversion and continuing for 11 months thereafter, an amount equal to 1/12th of 105% of the stated value of such Series G Preferred Stock; provided, however, that if the date that is 18 months following issuance of such Preferred Stock, or, if earlier, the date that is 36 months following the Commitment Date, occurs during such 12-month period, then payment of the balance, if any, shall accelerate and become due and payable by the Company within 10 trading days of such earlier date. If the VWAP Limitation is met and continues for each trading day through the date that is 18 months following issuance of such Preferred Stock, or, if earlier, the date that is 36 months following the Commitment Date, and during such period an Investor does not deliver a Notice of Conversion in respect of any portion of its Series G Preferred Stock held by such Investor at such time, then all Series G Preferred Stock held by such Investor on the date that is 18 months following issuance of such Preferred Stock, or, if earlier, the date that is 36 months following the Commitment Date, shall be redeemed by the Company, within 10 trading days of the date of such earlier date, at a price equal to the greater of (1) the product of (A) the Floor Price, as may be adjusted from time to time, as of the 10<sup>th</sup> trading day on which the Volume Weighted Average Price fell below the Floor Price and (B) the number of shares of Common Stock into which such Series G Preferred Stock that was not converted is convertible at such Floor Price (without regard to any limitations on conversion), and (2) 110% of the stated value of such Series G Preferred Stock. All such redemptions, if any, shall be paid in cash by the Company.

The foregoing description of the Series G Preferred Stock is qualified in its entirety by reference to the full text of the Certificate of Designation, a copy of which is attached hereto as Exhibit 3.1 and is incorporated in its entirety herein by reference.

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



*Press Release*

On April 30, 2025, the Company issued a press release announcing the entry into the PEPA. A copy of such press release is attached as Exhibit 99.1 hereto and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description</b>
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3.1	<a href="#">Certificate of the Designations, Powers, Preferences and Rights of Series G Convertible Preferred Stock.</a>
10.1*	<a href="#">Form of Preferred Equity Purchase Agreement.</a>
99.1	<a href="#">Press Release dated April 30, 2025.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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

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**SIGNATURE**

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: May 1, 2025

By: /s/ Saidal L. Mohmand  
Name: Saidal L. Mohmand  
Title: Chief Financial Officer

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## STATE OF NEVADA

**FRANCISCO V. AGUILAR***Secretary of State***RUBEN J. RODRIGUEZ***Deputy Secretary for Southern Nevada*

2250 Las Vegas Blvd North, Suite 400  
 North Las Vegas, NV 89030  
 Telephone (702) 486-2880  
 Fax (702) 486-2452


**OFFICE OF THE  
 SECRETARY OF STATE**
**GABRIEL DI CHIARA***Chief Deputy Secretary of State***DEANNA L. REYNOLDS***Deputy Secretary for Commercial Recordings*

401 N. Carson Street  
 Carson City, NV 89701  
 Telephone (775) 684-5708  
 Fax (775) 684-7141

Sharon Mason Ferraro  
 One North Central Avenue Suite 1200  
 Phoenix, AZ 85004, USA

**Work Order #:** W2025043002262

April 30, 2025

Receipt Version: 1

**Special Handling Instructions:****Submitter ID:** 78252**Charges**

Description	Fee Description	Filing Number	Filing Date/Time	Filing Status	Qty	Price	Amount
Certificate of Designation	Fees	20254863096	4/30/2025 12:59:00 PM	Approved	1	\$175.00	\$175.00
Certificate of Designation	Expedite Fee	20254863096	4/30/2025 12:59:00 PM	Approved	1	\$1000.00	\$1000.00
Total							\$1175.00

**Payments**

Type	Description	Payment Status	Amount
Trust Account	750805	Success	\$1175.00
Total			\$1175.00

**Credit Balance:** \$0.00

Sharon Mason Ferraro  
 One North Central Avenue Suite 1200  
 Phoenix, AZ 85004, USA

STATE OF NEVADA

**FRANCISCO V. AGUILAR**

*Secretary of State*

**RUBEN J. RODRIGUEZ**

*Deputy Secretary for Southern Nevada*

2250 Las Vegas Blvd North, Suite 400  
North Las Vegas, NV 89030  
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**OFFICE OF THE  
SECRETARY OF STATE**

**GABRIEL DI CHIARA**

*Chief Deputy Secretary of State*

**DEANNA L. REYNOLDS**

*Deputy Secretary for Commercial Recordings*

401 N. Carson Street  
Carson City, NV 89701  
Telephone (775) 684-5708  
Fax (775) 684-7141

**Business Entity - Filing Acknowledgement**

04/30/2025

**Work Order Item Number:** W2025043002262-4422680  
**Filing Number:** 20254863096  
**Filing Type:** Certificate of Designation  
**Filing Date/Time:** 4/30/2025 12:59:00 PM  
**Filing Page(s):** 19

**Indexed Entity Information:**

**Entity ID:** C13283-2001

**Entity Name:** Applied Digital Corporation

**Entity Status:** Active

**Expiration Date:** None

Commercial Registered Agent

CAPITOL CORPORATE SERVICES, INC.

716 N. Carson St. #B, Carson City, NV 89701, USA

The attached document(s) were filed with the Nevada Secretary of State, Commercial Recording Division. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Respectfully,

A handwritten signature in black ink that reads "FV Aguilar".

FRANCISCO V. AGUILAR

Secretary of State

Page 1 of 1  
Commercial Recording

2250 Las Vegas Blvd North  
North Las Vegas, NV 89030

401 N. Carson Street  
Carson City, NV 89701

1 State of Nevada Way  
Las Vegas, NV 89119



EXHIBIT A

**CERTIFICATE OF DESIGNATIONS  
OF THE POWERS, PREFERENCES AND  
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER RESTRICTIONS  
OF SERIES G CONVERTIBLE PREFERRED STOCK  
OF APPLIED DIGITAL CORPORATION**

Applied Digital Corporation (the “*Corporation*”), pursuant to the provisions of Sections 78.195 and 78.1955 of the General Corporation Law of the State of Nevada, does hereby make this Certificate of Designations of the Powers, Preferences and Relative, Participating, Optional and Other Restrictions (this “*Certificate of Designation*”), does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation (the “*Board*”) by the provisions of Article FOURTH of the Second Amended and Restated Articles of Incorporation of the Corporation (the “*Articles*”), the Board duly adopted resolutions authorizing the issuance of 156,000 shares of convertible preferred stock, par value \$0.001 per share, and fixing the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of convertible preferred stock to be designated “Series G Convertible Preferred Stock,” as further described below. This Certificate of Designation shall be in full force and effect as of the date hereof.

Section 1.1 Designation. As of the effective date of this Certificate of Designation, there is hereby created out of the authorized preferred stock of the Corporation a series of preferred stock designated as “Series G Convertible Preferred Stock” (the “*Preferred Stock*”), par value \$0.001 per share. The following rights, powers and privileges, and restrictions, qualifications and limitations, shall apply to the Preferred Stock and the holders of the Preferred Stock (each, a “*Holder*” and collectively, the “*Holder*s”). For the avoidance of doubt, references in this Certificate of Designation to “Preferred Stock” shall refer only to the Series G Convertible Preferred Stock and to no other series of preferred stock that may exist from time to time.

(a) Rank. The Preferred Stock, if entitled to the receipt of dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation’s affairs, ranks, with respect to the payment of any such dividends and rights upon the Corporation’s liquidation, dissolution or winding up of its affairs: (i) prior or senior to all classes or series of common stock of the Corporation, par value \$0.001 per share (“*Common Stock*”); (ii) on parity with the Series E Redeemable Preferred Stock of the Corporation, par value \$0.001 per share (the “*Series E Preferred Stock*”) and the Series E-1 Preferred Stock of the Corporation, par value \$0.001 per share (the “*Series E-1 Preferred Stock*”) in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority of one over the other; (iii) on parity with other classes or series of the Corporation’s equity securities issued in the future if, pursuant to the specific terms of such class or series of equity securities, the holders of such class or series of equity securities are entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up of the affairs of the Corporation in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority of one over the other; (iv) junior to any class or series of the Corporation’s equity securities if, pursuant to the specific terms of such class or series, the holders of such class or series are entitled to the receipt of dividends or amounts distributable upon liquidation, dissolution or winding up of the affairs of the Corporation in preference or priority to the Holders; and (v) junior to all of the Corporation’s existing and future debt.



(b) Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(i) Payments to Holders of Preferred Stock. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, before any distribution or payment shall be made to the holders of Common Stock or any other class or series of capital stock ranking junior to the Preferred Stock, by reason of their ownership thereof, and after payment or provision for the Corporation's debts and other liabilities, the Holders then outstanding shall be entitled to be paid out of the funds and assets available for distribution to the stockholders of the Corporation, an amount per share equal to the Stated Value (as defined below) for such share of Preferred Stock, plus an amount per share equal to accrued, but unpaid dividends to, but not including, the date of payment, and excluding interest on any such payment. If upon any such liquidation, dissolution or winding up of the affairs of the Corporation, the funds and assets available for distribution to the stockholders of the Corporation shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they are entitled under this Section 1.1(b)(i), the holders of shares of Preferred Stock shall share ratably in any distribution of the funds and assets available for distribution in proportion to the respective amounts that would otherwise be payable in respect of the shares of Preferred Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. The Preferred Stock shall rank on parity with the Series E Preferred Stock and Series E-1 Preferred Stock for purposes of determining the right to participate in, and the amount of, payments of the funds and assets available for distribution to the stockholders of the Corporation upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. The "**Stated Value**" shall mean One Thousand United States Dollars and No Cents (\$1,000.00) per share, subject to an equitable adjustment for stock splits, stock combinations, recapitalizations and similar transactions.

(ii) Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock as provided in Section 1.1(b)(i) and to the holders of shares of any other class or series of capital stock ranking senior to or on parity with the Preferred Stock, including, without limitation, the Series E Preferred Stock and Series E-1 Preferred Stock, the remaining funds and assets available for distribution to the stockholders of the Corporation shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares of Common Stock held by each such holder. Upon the liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, until payment in full is made to the holders of shares of Preferred Stock of the liquidation distribution to which they are entitled, (A) no dividend or other distribution shall be made to the holders of Common Stock or any other class or series of shares of capital stock of the Corporation ranking junior to the shares of Preferred Stock and (B) no purchase, redemption or other acquisition for any consideration by the Corporation shall be made in respect of the Common Stock or any other class or series of shares of capital stock of the Corporation ranking junior to the shares of Preferred Stock.

(iii) Exceptions. The consolidation or merger of the Corporation with or into any other corporation, trust or other entity, the consolidation or merger of any other corporation, trust or entity with or into the Corporation, the sale or transfer of any or all of the Corporation's assets or business or a statutory share exchange will not be deemed to constitute a liquidation, dissolution, or winding up of the affairs of the Corporation for purposes of this Section 1.1(b).

Section 1.2 Voting Rights.

(a) Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights.

(b) In any event, and notwithstanding the foregoing limitation, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the then outstanding shares of the Preferred Stock, (i) alter, waive or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation, (ii) increase or decrease the authorized number of shares of Preferred Stock, or (iii) amend its certificate of incorporation or bylaws or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock in any manner that adversely affects any rights given to this Preferred Stock regardless of whether any such action shall be by means of amendment to its certificate of incorporation or by merger, consolidation or otherwise; provided, however that, the issuance of any other capital stock of the Corporation shall not be deemed to be adversely affecting the powers, preferences or rights given to the Preferred Stock.

Section 1.3 Participating Dividends. From and after the issuance date of such Preferred Stock, the Holders on the record date fixed for holders of Common Stock for dividends or distributions shall be entitled to receive, concurrently with any dividends or distributions, such dividends or distributions paid to the holders of Common Stock to the same extent as if such Holders had converted the Preferred Stock into Common Stock (without regard to any limitations on conversion) and had held such shares of Common Stock on such record date.

Section 1.4 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "**Liquidation**"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount for each share of Preferred Stock equal to the greater of (i) the Stated Value and any other fees then due and owing thereon under this Certificate of Designation and (ii) the amount that would have been received had such Preferred Stock and accrued and unpaid dividends thereon, if any, been converted immediately prior to such Liquidation at the Conversion Price then in effect, before any distribution or payment shall be made to the holders of any Common Stock or any other securities of the Corporation or any of its subsidiaries that would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock or any other class of equity ranking junior to the Preferred Stock, but after any distribution or payment is made in full to holders of preferred stock ranking senior to the Preferred Stock and, if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among such Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation not less than twenty (20) calendar days prior to the payment date stated therein, to each Holder, unless otherwise filed with the SEC.

Section 1.5 Conversion.

(a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the date that is the earlier of (i) forty-five (45) days following the first issuance date of Preferred Stock or (ii) the date on which the Registration Statement (as defined in the Purchase Agreement) has been declared effective by the U.S. Securities and Exchange Commission (the "**SEC**"). Each share of Preferred Stock shall be convertible at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 1.5(e)) determined by dividing the Stated Value of such share of Preferred Stock by the applicable Conversion Price (as defined in Section 1.5(c)(i)). The Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "**Notice of Conversion**"), and, only if the full or remaining number of shares of Preferred Stock represented by the certificate are being converted, but without delaying the Corporation's requirement to deliver shares of Common Stock in accordance with



Section 1.5(d), by surrendering such certificate or certificates as soon as practicable on or following the delivery of the applicable Notice of Conversion (or an indemnification undertaking with respect to such Preferred Stock certificates in the case of its loss, theft, destruction or mutilation in compliance with the procedures set forth in Section 1.9(c)). The right of conversion may be exercised as to all or any portion of such Holder's Preferred Stock from time to time in accordance with this Section 1.5; provided that, in each case, unless otherwise mutually agreed in writing by the Corporation and the Holders holding a majority of the voting power of the Preferred Stock outstanding at the time, no right of conversion may be exercised by the Holders in excess of \$30,000,000 of Stated Value in the aggregate per month (allocated amongst each initial Holder based on a fraction, the numerator of which is the number of shares of Preferred Stock issued to such Holder pursuant to that certain Preferred Equity Purchase Agreement, dated as of April 30, 2025 (the "**Commitment Date**"), by and among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms (the "**Purchase Agreement**") on the first issuance date of Preferred Stock and the denominator of which is the aggregate number of all shares of Preferred Stock issued to the initial Holders pursuant to the Purchase Agreement on the first issuance date of Preferred Stock (with respect to each initial Holder, the "**Investor Allocation**")). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue and the number of shares of Preferred Stock owned subsequent to the conversion at issue. With respect to each Notice of Conversion, the "**Conversion Date**" shall be the date such notice is deemed delivered under Section 1.9(a). The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

(b) [Reserved.]

(c) Conversion Price.

(i) As of each Conversion Date, the conversion price for the Preferred Stock then being converted (or deemed converted) shall equal the greater of (a) ninety-five percent (95%) of the lowest Volume Weighted Average Price during the five (5) Trading Day period immediately preceding and ending on the Trading Day immediately preceding such Conversion Date and (b) the applicable Floor Price (the "**Conversion Price**"). The initial Floor Price shall be \$4.25, which shall be subject to adjustment as provided herein (the "**Floor Price**").

(ii) At any time, and from time to time, the Corporation may elect to reduce the Floor Price; provided, that, in no event shall such reduction result in an adjusted Floor Price that is less than \$1.34.

(iii) As used herein:

(A) "**Principal Market**" means, as applicable, the Nasdaq Global Select Market, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market or the New York Stock Exchange (or any successors to any of the foregoing).

(B) "**Volume Weighted Average Price**" means, as of any Trading Day, the daily volume weighted average sale price per share of the Common Stock on the Principal Market, as reported by Bloomberg Financial Markets ("**Bloomberg**") for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Volume Weighted Average Price cannot be calculated for the Common Stock on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value per share of Common Stock as mutually determined in good faith by the Board and the Holders holding a majority of the Preferred Stock being converted for which the



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calculation of the Volume Weighted Average Price is required. The Volume Weighted Average Price shall be determined without regard to after-hours trading or any other trading outside of the regular trading hours. In the event that any stock split, reverse stock split, stock dividend or other reclassification or combination of the Common Stock (a “**Stock Event**”) is consummated during any period of consecutive Trading Days on which Volume Weighted Average Prices are being calculated, the Volume Weighted Average Price for each Trading Day during such period prior to the effectiveness of such Stock Event shall be appropriately adjusted to reflect such Stock Event.

(C) “**Trading Day**” means any day on which the Principal Market is open for trading.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the “**Share Delivery Date**”), the Corporation shall use its reasonable best efforts to deliver, or cause to be delivered, to the converting Holder the number of shares of Common Stock issuable upon conversion of the shares of Preferred Stock designated in the applicable Notice of Conversion (the “**Conversion Shares**”) being acquired upon the conversion of the Preferred Stock. As used herein, “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s Principal Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares. Except as pursuant to Section 1.5(e), if, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the applicable Share Delivery Date, such Holder shall, to the fullest extent permitted by law, be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such conversion, in which event the Corporation shall promptly return to such Holder the shares of Preferred Stock delivered to the Corporation and such Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion. In addition, if, on or after the applicable Share Delivery Date, such Holder purchases (in an open market transaction or otherwise) Common Stock to deliver in satisfaction of a sale by such Holder of Common Stock issuable upon such conversion that such Holder anticipated receiving from the Corporation (a “**Buy-In**”), then the Corporation shall, within two (2) Trading Days after such Holder’s request and in such Holder’s discretion, either (x) pay cash to such Holder in an amount equal to such Holder’s total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Corporation’s obligation to credit such Holder’s account with the Transfer Agent for the shares of Common Stock to which such Holder is entitled upon such Holder’s conversion of the applicable shares of Preferred Stock shall terminate, or (y) promptly honor its obligation to credit such Holder’s account with the Transfer Agent for such shares of Common Stock and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the price at which the sell order giving rise to such purchase obligation was executed.

(iii) Reservation of Shares Issuable Upon Conversion. From and after the after the Commitment Date until the date no shares of Preferred Stock remain outstanding, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for issuances pursuant to the terms of this Certificate of Designation, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Preferred Stock, not less than the aggregate number of shares of the Common Stock as shall be issuable upon the conversion of all then outstanding shares of Preferred Stock at the Conversion Price then in effect (without

regard to any limitation on conversions) (the “**Required Reserved Amount**”). The Corporation shall, so long as any of the Preferred Stock remains outstanding, take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of issuing shares of Common Stock with respect of the Preferred Stock pursuant to the terms of this Certificate of Designation, no less than a number of shares of Common Stock equal to the applicable Required Reserved Amount. If at any time while any of the Preferred Stock remains outstanding the Corporation does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Preferred Stock then outstanding at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Corporation shall immediately take all action necessary to increase the Corporation’s authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Preferred Stock then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders’ approval of such increase in authorized shares of Common Stock and to cause the Board to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Corporation is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Corporation may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. The Corporation covenants that all Conversion Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable. As used herein, “**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(iv) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holders would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the applicable Conversion Price or round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Preferred Stock.

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

(e) Conversion Limitations.

(i) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the



Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's affiliates, and any Persons acting as a group together with such Holder or any of such Holder's affiliates (such Persons, collectively, the "**Attribution Parties**")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock) beneficially owned by such Holder and each of its Attribution Parties. For purposes of this Section 1.5(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "**Exchange Act**"). To the extent that the limitation contained in this Section 1.5(e)(i) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case, subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall be entitled to rely on such representation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act. For purposes of this Section 1.5(e)(i), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the SEC, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the transfer agent of the Corporation, Computershare Trust Company, N.A. (the "**Transfer Agent**") setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within one (1) Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be, with respect to each Holder, 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by such Holder. Upon delivery of a written notice to the Corporation, any Holder may from time to time increase or decrease the Beneficial Ownership Limitation to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Beneficial Ownership Limitation will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Corporation and (ii) any such Beneficial Ownership Limitation will apply only to such Holder together with such Holder's affiliates, and any Persons acting as a group together with such Holder or any of such Holder's affiliates and not to any other Holder of Preferred Stock that is not an affiliate of such Holder or a Person acting as a group together with such Holder or any of such Holder's affiliates.

(ii) Principal Market Limitation. In accordance with the rules of the Principal Market, the Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that the issuance of such Common

Stock, together with any other issuances of Common Stock hereunder, would exceed 44,931,523 (representing 19.99% of the aggregate number of shares of Common Stock issued and outstanding as of the Commitment Date and subject to adjustment for any stock splits, combinations or the like), calculated in accordance with the rules of the Principal Market, which number shall be reduced, on a share-for-share basis, by the number of shares of Common Stock issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the transactions contemplated by the Purchase Agreement under the applicable rules of the Principal Market (such maximum number of shares, the “*Exchange Cap*”). No initial Holder shall be issued pursuant to the terms of this Certificate of Designation, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by such Holder’s Investor Allocation. In the event that any Holder shall sell or otherwise transfer any of such Holder’s shares of Preferred Stock, the transferee shall be allocated a pro rata portion of such Holder’s Investor Allocation with respect to such portion of such Preferred Stock transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Investor Allocation allocated to such transferee. In the event that any Holder shall convert all of such Holder’s Preferred Stock into a number of shares of Common Stock which, in the aggregate, is less than such Holder’s Investor Allocation, then the difference between such Holder’s Investor Allocation and the number of shares of Common Stock actually issued to such Holder shall be allocated to the respective Investor Allocations of the remaining Holders on a pro rata basis in proportion to the Stated Value of Preferred Stock then held by each such Holder. To the extent any Holder becomes prohibited from converting any portion of the Preferred Stock pursuant to this Section 1.5(e)(ii), and such prohibition continues through the date that is eighteen (18) months following issuance of such Preferred Stock, or, if earlier, the date that is thirty-six (36) months following the Commitment Date, then the portion of Preferred Stock held by such Holder at such time shall be redeemed by the Corporation, within ten (10) Trading Days after such earlier date, in cash by wire transfer of immediately available funds at a price equal to the greater of (A) the product of (x) the Conversion Price in effect on the first (1<sup>st</sup>) date this limitation prohibited conversion thereof and (y) the number of shares of Common Stock into which such Preferred Stock that was not converted is convertible at such Conversion Price (without regard to any limitations on conversion), and (B) one hundred ten percent (110%) of the Stated Value of such Preferred Stock.

(iii) VWAP Limitation. If, (x) at any time on or after the date on which a share of Preferred Stock becomes convertible in accordance with the provisions of Section 1.5, the Volume Weighted Average Price for any Trading Day falls below the Floor Price and then remains below the Floor Price for ten (10) consecutive Trading Days (which ten (10) consecutive Trading Day period shall not include any days prior to the original issuance date of the applicable Preferred Stock) (subject to adjustment for any stock split, reverse stock split, stock dividend or other reclassification or combination of the Common Stock occurring during such ten (10) consecutive Trading Day period) and (y) the Corporation does not elect to reduce the Floor Price in accordance with Section 1.5(c)(i) hereof (clauses (x) and (y), the “*VWAP Condition*”), and while such VWAP Condition is met a Holder delivers a Notice of Conversion in respect of any portion of Preferred Stock held by such Holder at such time, then in lieu of effecting such conversion, the Corporation shall redeem such Preferred Stock and pay to such Holder, on a monthly basis beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month following the Conversion Date in respect of such Notice of Conversion and for continuing for the eleven (11) consecutive months thereafter, an amount equal to one-twelfth (1/12<sup>th</sup>) of one hundred five percent (105%) of the Stated Value of such Preferred Stock; provided, however, that if the date that is eighteen (18) months following issuance of such Preferred Stock, or, if earlier, the date that is thirty-six (36) months following the Commitment Date, occurs prior to the conclusion of such twelve (12)-month period, then payment of the balance, if any, shall accelerate and become due and payable by the Corporation within ten (10) Trading Days of such earlier date. If the VWAP Condition is met and continues for each Trading Day through the date that is eighteen (18) months following issuance of such Preferred Stock, or, if earlier, the date that is thirty-six (36) months following the Commitment Date, and during such period a Holder does not deliver a Notice of Conversion in respect of any portion of Preferred Stock held by such Holder at such time, then all Preferred Stock held by such



Holder on the date that is eighteen (18) months following issuance of such Preferred Stock, or, if earlier, the date that is thirty-six (36) months following the Commitment Date, shall be redeemed by the Corporation, within ten (10) Trading Days of such earlier date, in cash by wire transfer of immediately available funds at a price equal to the greater of (1) the product of (A) the Conversion Price as of the tenth (10<sup>th</sup>) Trading Day on which the Volume Weighted Average Price fell below the Floor Price and (B) the number of shares of Common Stock into which such Preferred Stock that was not converted is convertible at such Conversion Price (without regard to any limitations on conversion), and (2) one hundred ten percent (110%) of the Stated Value of such Preferred Stock; provided, however, that if at any time after the tenth (10<sup>th</sup>) Trading Day on which the Volume Weighted Average Price fell below the Floor Price, but prior to date that is eighteen (18) months following issuance of such Preferred Stock, or, if earlier, the date that is thirty-six (36) months following the Commitment Date, the Volume Weighted Average Price for any Trading Day exceeds the Floor Price and remains above the Floor Price for any ten (10) consecutive Trading Days, then the VWAP Condition shall no longer apply and such Preferred Stock shall not be redeemable by the Corporation in accordance with the immediately preceding sentence. Notwithstanding the foregoing, a Holder may choose to convert any portion of its Preferred Stock at the Floor Price in accordance with the provisions of Section 1.5, regardless of whether the VWAP Condition is met, and upon such conversion such Holder shall be deemed, automatically and without further action, notice or other deed by the Corporation, to have waived its right to have the Corporation redeem any such shares of Preferred Stock in accordance with this Section 1.5(e)(iii).

(iv) No Strict Construction. The provisions of this Section 1.5 shall be construed and implemented in a manner otherwise than in strict conformity with the terms hereof to correct such provisions (or any portions thereof) which may be defective or inconsistent with the intended limitations contained in Section 1.5(e) or to make changes or supplements necessary or desirable to properly give effect to such limitations, and shall be interpreted in a way to as to be consistent with the rules and regulations of the Principal Market. The limitations contained in Section 1.5(e) shall apply to a successor holder of Preferred Stock.

#### Section 1.6 Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while the Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other any securities of the Corporation or the subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock (such securities, the “**Common Stock Equivalents**”), (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price then in effect shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 1.6(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. If the Corporation, at any time while the Preferred Stock is outstanding, authorizes and issues an additional class of common or special stock, with dividend and voting rights at a ratio different than the existing class of Common Stock (the “**New Common Stock**”), then the

Preferred Stock will automatically become convertible, at the election of such Holder, into shares of the New Common Stock at an adjusted Conversion Price proportional to the Conversion Price then in effect multiplied by a fraction, the numerator of which shall be the number of votes per share of the class of New Common Stock, and the denominator of which shall be the number of votes per share of the existing class of Common Stock.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 1.6(a) above, if at any time the Corporation grants, issues or sells any common stock equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then, the holder of Preferred Stock thereof will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the holder of Preferred Stock could have acquired if the holder of Preferred Stock had held the number of shares of Common Stock acquirable upon complete conversion of such holder’s Preferred Stock (without taking into account any limitations or restrictions on the convertibility of the Preferred Stock and assuming the Preferred Stock is convertible as of the applicable date of determination) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such purchase (provided, however, that to the extent that a Holder’s right to participate in any such Purchase Right would result in such Holder (together with such Holder’s affiliates, and any Persons acting as a group together with such Holder or any of such Holder’s affiliates) exceeding the Beneficial Ownership Limitation, then, such Holder shall not be entitled to participate in such Purchase Right to such extent (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent) and such Purchase Right to such extent shall be held in abeyance for such Holder, so long as such Holder promptly elects to exercise such Purchase Right when notified of the applicable transaction and provides payment for the exercise of such Purchase Rights in advance (which payment shall be held in abeyance for such Holder), until such time or times as its right thereto would not result in such Holder (together with such Holder’s affiliates, and any Persons acting as a group together with such Holder or any of such Holder’s affiliates) exceeding the Beneficial Ownership Limitation, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right to be held similarly in abeyance) to the same extent as if there had been no such limitation).

(c) Fundamental Transaction. If, at any time while the Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of a business unit in excess of fifty percent (50%) of the Corporation’s revenues or of all or substantially all of the assets of the Corporation and its subsidiaries, taken as a whole, in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of fifty percent (50%) or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person, whereby such other Person acquires more than fifty percent (50%) of the outstanding shares of Common Stock (each, a “**Fundamental Transaction**”), then the Corporation shall deliver written notice of such Fundamental Transaction to each Holder promptly upon the signing of such Fundamental Transaction, and in any event, at least twenty (20) calendar days prior to the consummation of such



Fundamental Transaction (the “**Fundamental Transaction Notice Date**”), which notice shall include a summary of the terms of such Fundamental Transaction, including the expected amount and type of consideration to be payable to the securityholders of the Corporation. By the deadline set forth in such notice, which shall be at least ten (10) calendar days following the date of the Fundamental Transaction Notice Date, each Holder shall inform the Corporation in writing of its election to either (A) convert all, but not less than all, of its Preferred Stock into Common Stock at the applicable Conversion Price contingent upon the consummation of such Fundamental Transaction or (B) upon any subsequent conversion of the Preferred Stock, receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 1.5(e) on the conversion of the Preferred Stock and assuming the Preferred Stock are convertible as of the applicable date of determination), the number of securities of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the “**Alternate Consideration**”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Holder’s Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 1.5(e) on the conversion of the Series Preferred Stock). For purposes of any such conversion, the determination of the applicable Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the applicable Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then each Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the “**Successor Entity**”) to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the Purchase Agreement in accordance with the provisions of this Section 1.6(c) pursuant to written agreements in form and substance reasonably satisfactory to the applicable Holder(s) and approved by a majority of such Holder(s) (without unreasonable delay and such majority shall be calculated based on the Stated Values of the Preferred Stock of such Holder(s)) prior to such Fundamental Transaction. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the Purchase Agreement referring to the Corporation shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the Purchase Agreement with the same effect as if such Successor Entity had been named as the Corporation herein.

(d) Calculations. All calculations under this Section 1.6 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(e) Notice to the Holders.

(i) Adjustment to Conversion Price. Whenever the Conversion Price then in effect is adjusted pursuant to any provision of this Section 1.6, the Corporation shall promptly deliver to each Holder a notice setting forth the adjusted Conversion Price and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Preferred Stock, and shall cause to be delivered to each Holder at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to convert such Holder's Preferred Stock (subject to the Beneficial Ownership Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 1.7 Redemption Right.

(a) Upon a Trading Failure, the Corporation shall within two (2) Trading Days deliver written notice thereof via electronic mail (a "**Trading Failure Notice**") to the Holders, provided that the Holders have previously provided their e-mail address to the Corporation, unless otherwise publicly filed with the SEC.

(b) At any time within five (5) Trading Days of the Holder's receipt of a Trading Failure Notice (or at such time by which the Corporation would be required to deliver a Trading Failure Notice), such Holder may require the Corporation to redeem (a "**Redemption**") all or any portion of such Holder's Preferred Stock by delivering written notice thereof ("**Redemption Notice**") to the Corporation, which Redemption Notice shall indicate the Preferred Stock such Holder is electing to require the Corporation to redeem. Any Preferred Stock subject to redemption pursuant to Section 1.7(b) shall be redeemed by the Corporation on the applicable Redemption Date (as defined in Section 1.7(e)) in cash by wire transfer of immediately available funds at a price equal to the applicable Redemption Price (as defined in Section 1.7(e)).

(c) As a condition to each Holder's exercise of its redemption rights under this Section 1.7, such Holder must own beneficially and of record, the Preferred Stock to be redeemed, free and clear of any liens, claims, equities, charges, options, rights of first refusal or encumbrances (other than such imposed by applicable securities laws) and make customary representations solely regarding the ability to transfer, convey and deliver full ownership and title of such Preferred Stock to the Corporation.

(d) Other than as specifically permitted by this Certificate of Designation, the Corporation may not prepay or redeem any portion of the outstanding Preferred Stock of a Holder without such Holder's prior written consent. Upon receipt of the full Redemption Price in cash by wire transfer of immediately available funds by the Holders of then outstanding shares Preferred Stock, all such shares of Preferred Stock shall cease to be outstanding. If a Redemption Notice shall have been duly given, and if on the applicable Redemption Date, the applicable Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor to such Holders in a timely manner, then



dividends with respect to such shares of Preferred Stock shall cease to accrue from and after such Redemption Date, and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the applicable Holders to receive the Redemption Price without interest.

(e) As used herein:

**“Redemption Date”** means the date set forth in the applicable Redemption Notice, which shall not be earlier than the twentieth (20<sup>th</sup>) Trading Day nor later than the ninetieth (90<sup>th</sup>) Trading Day, after the date of delivery of such Redemption Notice to the Corporation.

**“Redemption Price”** means the greater of (i) the Stated Value of the Preferred Stock being redeemed and (ii) the product of (x) the lowest Conversion Price in effect during the period beginning on the date immediately preceding such Trading Failure and ending on the date such Holder delivers a Redemption Notice and (y) the number of shares of Common Stock into which such Preferred Stock is convertible at the Conversion Price then in effect (without regard to any limitations on conversion).

**“Trading Failure”** means (A) the suspension of the Common Stock from trading on the Principal Market for a period of ten (10) consecutive Trading Days or for more than an aggregate of twenty (20) Trading Days in any 365-day period or (B) the failure of the Common Stock to be listed on the Principal Market.

Section 1.8 Transfer Restrictions. Any transferee of shares of Preferred Stock shall comply with Section 6.01 of the Purchase Agreement, and any attempted sale, assignment or transfer of shares of Preferred Stock made without such compliance shall be void ab initio and of no effect.

Section 1.9 Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered by electronic mail addressed to the Corporation, at the e-mail address set forth in the Purchase Agreement, or such other e-mail address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 1.9(a). Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered by electronic mail addressed to each Holder, at the e-mail address of such Holder appearing on the books of the Corporation, or if no such e-mail address appears on the books of the Corporation, at the e-mail address of such Holder, as set forth in the Purchase Agreement, provided that such Holder has provided its e-mail address in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via electronic mail at the e-mail address required under this Section 1.9(a) at or prior to 9:00 a.m. New York City time on any Trading Day, or (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail at the e-mail address required under this Section 1.9(a) on a day that is not a Trading Day or later than 9:00 a.m. New York City time on any Trading Day.

(b) Absolute Obligation. To the fullest extent permitted by law, and except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

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

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Nevada, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designation (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in either the City of New York, Borough of Manhattan or in Clark County, Nevada (the "**Designated Courts**"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Designated Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of the Purchase Agreement), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Designated Courts, or such Designated Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

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

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

(g) Modification; Amendment or Waiver. The terms of this Certificate of Designation shall, including for the purposes of Section 78.1955 of the General Corporation Law of the State of Nevada, only be amended, waived, altered or repealed, including by merger, consolidation or otherwise, by (x) the

affirmative vote of the holders of a majority of the voting power of the Preferred Stock outstanding at the time, voting as a separate class and (y) the approval of the Board. For the avoidance of doubt, neither the holders of Common Stock or any other series of preferred shares of the Corporation other than the Preferred Stock shall be entitled to vote or approve of, and such vote or approval shall not be required, for any amendment, waiver, alteration or repeal on matters that pertain only to the Preferred Stock.

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

(i) Status of Converted or Repurchased Preferred Stock. If any shares of Preferred Stock shall be converted, repurchased or reacquired by the Corporation, such shares shall be retired and resume the status of authorized but unissued shares of Preferred Stock and shall no longer be designated as Series G Convertible Preferred Stock.

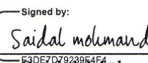
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RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Nevada law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Designation this 30<sup>th</sup> day of April, 2025.

**COMPANY:**

**APPLIED DIGITAL CORPORATION**

By:  Signed by:  
Name: Saidal Mohmand  
Title: Chief Financial Officer



ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES  
OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series G Convertible Preferred Stock indicated below into shares of common stock, par value \$0.001 per share (the "Common Stock"), of Applied Digital Corporation, a Nevada corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation in accordance with the Purchase Agreement. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Number of shares of Preferred Stock owned prior to Conversion: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Stated Value of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock to be owned subsequent to Conversion: \_\_\_\_\_

Transfer Agent Account No.: \_\_\_\_\_

[HOLDER]

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

Name:

Title:

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## **PREFERRED EQUITY PURCHASE AGREEMENT**

**THIS PREFERRED EQUITY PURCHASE AGREEMENT** (this “Agreement”) dated as of April 30, 2025 (the “Effective Date”) is made by and among the investment entities named on the signature pages hereto (each, an “Investor” and collectively, the “Investors”) and **APPLIED DIGITAL CORPORATION**, a company incorporated under the laws of the State of Nevada (the “Company”).

**WHEREAS**, the parties desire that, upon the terms and subject to the conditions contained herein, the Company shall have the right to issue and sell to the Investors, from time to time as provided herein, and the Investors shall purchase from the Company, up to \$150 million of the Company’s shares of Series G Convertible Preferred Stock, par value \$0.001 per share (the “Preferred Stock”) having the designations, powers, preferences, rights, qualifications, limitations and restrictions, as specified in the form of Certificate of Designations attached hereto as Exhibit A (the “Certificate of Designations”); and

**WHEREAS**, the offer and sale of the Preferred Stock issuable hereunder and the issuance of the Conversion Shares (as defined below) upon conversion of the Preferred Stock will be made in reliance upon Section 4(a)(2) under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the “Securities Act”), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder.

**NOW, THEREFORE**, the Parties hereto agree as follows:

### **Article I. Certain Definitions**

“Acceptable CEO” shall mean Wesley Cummins and each successor Chief Executive Officer of the Company who is either (i) deemed to be an Acceptable CEO under Section 6.21 or (ii) otherwise confirmed in a writing signed by a majority-in-interest of the Investors (as determined based on their respective Allocation Percentages) to be an “Acceptable CEO” for purposes of this Agreement.

“Affiliate” shall have the meaning set forth in Section 3.06.

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Allocation Percentages” shall mean the allocation percentages of the Investors as set forth on Annex I hereto (as may be adjusted in accordance with Section 2.01(c) (ii)).

“Applicable Laws” shall mean all applicable laws, statutes, rules, regulations, orders, decrees, rulings, injunctions, executive orders, directives, policies, guidelines and codes having the force of law, whether local, national, or international, as amended from time to time, including without limitation (i) all applicable laws that relate to money laundering, terrorist financing, financial record keeping and reporting, (ii) all applicable laws that relate to anti-bribery, anti-corruption, books and records and internal controls, including the United States Foreign Corrupt Practices Act of 1977, and (iii) any Sanctions laws.

“Black Out Period” shall have the meaning set forth in Section 6.03(a).

“Business Day” shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by Applicable Law to close.

“CEO Change Notice” shall have the meaning set forth in Section 6.21.

“Certificate of Designations” shall have the meaning set forth in the recitals of this Agreement.

“Closing” shall have the meaning set forth in Section 2.02.

“Commitment Amount” shall mean Put Shares having an aggregate Purchase Price of \$150,000,000.

“Commitment Period” shall mean the period commencing on the Effective Date and expiring upon the date of termination of this Agreement in accordance with Section 10.01.

“Common Share Equivalents” shall mean any securities of the Company which entitle the holder thereof to acquire at any time Common Shares, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

“Common Shares” shall mean the shares of the Company’s common stock, par value \$0.001 per share.

“Company” shall have the meaning set forth in the preamble of this Agreement.

“Company Counsel” shall mean Lowenstein Sandler LLP, with offices at 1251 Avenue of the Americas New York, NY 10020.

“Company Indemnitees” shall have the meaning set forth in Section 5.02.

“Condition Satisfaction Date” shall have the meaning set forth in Section 7.01.

“Conversion Price” shall have the meaning set forth in the Certificate of Designations.

“Conversion Shares” shall mean the Common Shares issuable upon conversion of the Put Shares pursuant to the Certificate of Designations.

“Disclosure Report” shall have the meaning set forth in Section 6.12.

“Disclosure Schedules” shall mean the Disclosure Schedules of the Company delivered concurrently herewith.

“DTC” shall mean The Depository Trust Company.

“Effective Date” shall have the meaning set forth in the preamble of this Agreement.

“Environmental Laws” shall have the meaning set forth in Section 4.13.

“Exchange Act” shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Filing Deadline” shall have the meaning set forth in Section 6.02(a).

“FINRA” shall mean the Financial Industry Regulatory Authority, Inc.

“Floor Price” shall have the meaning set forth in the Certificate of Designations.

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“Fundamental Transaction” shall have the meaning set forth in the Certificate of Designations.

“GAAP” shall have the meaning set forth in Section 4.06.

“Hazardous Materials” shall have the meaning set forth in Section 4.13.

“Indemnified Liabilities” shall have the meaning set forth in Section 5.01.

“Initial Put Issuance” shall mean the first Put Issuance requested by the Company pursuant to Article II hereof.

“Investor(s)” shall have the meaning set forth in the preamble of this Agreement.

“Investor Indemnitees” shall have the meaning set forth in Section 5.01.

“Legend Removal Date” shall have the meaning set forth in Section 6.01(c).

“Material Adverse Effect” shall mean any event, occurrence or condition that has had or would reasonably be expected to have (i) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated herein, (ii) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under this Agreement.

“Material Outside Event” shall have the meaning set forth in Section 6.08.

“Nasdaq” shall mean The Nasdaq Stock Market LLC.

“OFAC” shall have the meaning set forth in Section 4.28.

“Party” or “Parties” means a party or the parties to this Agreement, except as the context may otherwise require.

“Person” shall mean an individual, a corporation, a partnership, a limited liability company, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Per Share Purchase Price” shall mean the price per Put Share obtained by dividing (x) \$1,000, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Preferred Stock that occur after the date of this Agreement and prior to the applicable Closing by (y) 104%.

“Plan of Distribution” shall mean the section of the Registration Statement disclosing the plan of distribution of the Conversion Shares.

“Principal Market” shall mean the Nasdaq Global Select Market; provided however, that in the event the Common Shares are ever listed or traded on the Nasdaq Capital Market, the Nasdaq Global Market, the New York Stock Exchange, or the NYSE American, then the “Principal Market” shall mean such other market or exchange on which the Common Shares are then listed or traded to the extent such other market or exchange is the principal trading market or exchange for the Common Shares.

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“Prospectus” shall mean any prospectus (including, without limitation, all amendments and supplements thereto) used by the Company in connection with the Registration Statement.

“Prospectus Supplement” shall mean any prospectus supplement to a Prospectus filed with the SEC from time to time pursuant to Rule 424(b) under the Securities Act, including the documents incorporated by reference therein, including, without limitation, any prospectus supplement to be filed in accordance with Section 6.02 hereof.

“Preferred Stock” shall have the meaning set forth in the recitals of this Agreement.

“Purchase Price” shall mean, with respect to any Put Shares, the product of (x) such number of Put Shares and (y) the Per Share Purchase Price.

“Put Date” shall mean the first Trading Day after the Put Notice Date.

“Put Issuance” shall mean any issuance and sale of Put Shares by the Company to the Investors pursuant Article II hereof.

“Put Limitation” shall have the meaning set forth in Section 2.01(a)(i)

“Put Notice” shall mean a written notice in the form of Exhibit B attached hereto to the Investors executed by an officer of the Company and setting forth the aggregate Purchase Price for the Put Issuance it desires to effect under this Agreement, the aggregate number of shares of Preferred Stock issuable to the Investors pursuant to such Put Issuance (as determined by dividing the aggregate Purchase Price for the Put Issuance by the Per Share Purchase Price), and each Investor’s pro rata allocation of such shares of Preferred Stock, based on their respective Allocation Percentages.

“Put Notice Date” shall mean each date the Company is deemed to have delivered (in accordance with Section 2.01(b)) a Put Notice to the Investors, subject to the terms of this Agreement.

“Put Shares” shall mean the shares of Preferred Stock that the Company shall issue and sell to the Investors pursuant to a Put Notice delivered in accordance with the terms of this Agreement.

“Registration Period” shall mean the period beginning on the date of effectiveness of the Registration Statement and shall continue until all the Conversion Shares have been sold or may be sold without any restrictions pursuant to Rule 144, as determined by the Company Counsel pursuant to a written opinion letter to such effect, addressed and reasonably acceptable to the Company’s transfer agent.

“Registrable Securities” shall mean (i) the Conversion Shares and (ii) any securities issued or issuable with respect to the Conversion Shares by way of exchange, stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise.

“Registration Statement” shall mean any registration statement of the Company filed pursuant to this Agreement, including the Prospectus, amendments and supplements to such registration statement or Prospectus, including post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement, registering the resale from time to time by the Investors of the Registrable Securities under the Securities Act as provided herein.

“Regulation D” shall mean the provisions of Regulation D promulgated under the Securities Act.

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“Required Approvals” shall mean (i) the filings required or contemplated by this Agreement, including those set forth in Section 6.02, and (ii) the notice and/or application(s) to each applicable Principal Market for the issuance and sale of the Registrable Securities and the listing of the Registrable Securities for trading thereon in the time and manner required thereby and such filings as are required to be made under applicable state securities laws.

“Sanctioned Countries” shall have the meaning set forth in Section 4.28.

“Sanctions” shall have the meaning set forth in Section 4.28.

“SEC” shall mean the U.S. Securities and Exchange Commission.

“SEC Documents” shall have the meaning set forth in Section 4.05.

“Securities” means the Put Shares and the Conversion Shares.

“Securities Act” shall have the meaning set forth in the recitals of this Agreement.

“Settlement Document” shall have the meaning set forth in Section 2.02(a).

“Stated Value” shall have the meaning set forth in the Certificate of Designations.

“Subsidiaries” shall mean any Person in which the Company, directly or indirectly, (x) owns a majority of the outstanding capital stock or holds a majority of the equity or similar interest of such Person or (y) controls or operates all or substantially all of the business, operations or administration of such Person, and the foregoing are collectively referred to herein as “Subsidiaries.”

“Trading Day” shall mean any day during which the Principal Market shall be open for business.

“Transaction Documents” shall have the meaning set forth in Section 4.02.

“Universal Shelf Registration Statement” shall have the meaning set forth in Section 6.02(f).

“Variable Rate Transaction” shall mean a transaction (other than a transaction contemplated by this Agreement) in which the Company (i) issues or sells any Common Shares or Common Share Equivalents that are convertible into, exchangeable or exercisable for, or include the right to receive additional Common Shares either (A) where the conversion price, exercise price, exchange rate or other price fluctuates upon and/or varies with the trading prices of or quotations for the Common Shares at any time after the initial issuance thereof, or (B) with a conversion, exercise price or exchange rate that is subject to being reset at some future date after the initial issuance of such equity or debt security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Shares (including, without limitation, any “full ratchet,” “share ratchet,” “price ratchet,” but not including any “weighted average” anti-dilution provisions or standard anti-dilution protection for any reorganization, recapitalization, non-cash dividend, stock split or other similar transaction). Notwithstanding anything herein to the contrary, (x) the offer, issuance or sale of Common Shares or any Common Share Equivalents, or similar securities, at a fixed price or having a fixed conversion, exercise or exchange price or rate, (y) an at-the-market offering, or (z) so long as the transactions contemplated by this Agreement are expressly excluded therefrom, any securities with “weighted average” anti-dilution provisions, in each case, shall not be deemed a Variable Rate Transaction nor shall otherwise be prohibited by this Agreement.

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“VWAP” shall mean for any Trading Day, the daily volume weighted average price of the Common Shares for such Trading Day on the Principal Market during regular trading hours as reported by Bloomberg L.P.

## **Article II. Put Issuances**

Section 2.01 Put Issuances: Mechanics. Upon the terms and subject to the conditions of this Agreement, during the Commitment Period, the Company, at its sole discretion, shall have the right, but not the obligation, to require the Investors to purchase from the Company, Put Shares by the delivery to the Investors of Put Notices on the following terms:

- (a) Put Notice. At any time during the Commitment Period, the Company may require the Investors to purchase shares of Preferred Stock, up to the then applicable Put Limitation, by delivering a Put Notice to the Investors, subject to the satisfaction or waiver by the Investors of the conditions set forth in Section 7.01, and in accordance with the following provisions:



- (i) The Company shall, in its sole discretion, select the aggregate Purchase Price for the Put Issuance it desires to issue and sell to the Investors in each Put Notice and the time it desires to deliver each Put Notice. Unless otherwise agreed by a majority-in-interest of the Investors (as determined based on their respective Allocation Percentages), (x) the aggregate Purchase Price for each Put Issuance shall be an increment of \$25,000,000 and (y) the aggregate Purchase Price for all Put Issuances shall not exceed \$75,000,000 (the “Put Limitation”); provided, that, (A) on the tenth (10<sup>th</sup>) calendar day after the date on which the Registration Statement has been declared effective by the SEC, the dollar amount of the Put Limitation shall automatically, without further action, notice or deed, be increased by an additional \$25,000,000 (for up to an aggregate of \$100,000,000), (B) on the fortieth (40<sup>th</sup>) calendar day after the date on which the Registration Statement has been declared effective by the SEC, the dollar amount of the Put Limitation shall automatically, without further action, notice or deed, be increased by an additional \$25,000,000 (for up to an aggregate of \$125,000,000), and (C) on the seventieth (70<sup>th</sup>) calendar day after the date on which the Registration Statement has been declared effective by the SEC, the dollar amount of the Put Limitation shall automatically, without further action, notice or deed, be increased by an additional \$25,000,000 (for up to an aggregate of the Commitment Amount).
- (ii) There shall be no mandatory minimum for the number of Put Issuances made by the Company and no non-usage fee for not utilizing the Commitment Amount or any part thereof.
- (b) Date of Delivery of Put Notice. Put Notices shall be delivered in accordance with the instructions set forth on the bottom of Exhibit B attached hereto. A Put Notice shall be deemed delivered on (i) the day it is received by an Investor if such notice is received by e-mail at or before 9:00 a.m. New York City time (or at such later time if agreed to by such Investor in its sole discretion), or (ii) the immediately succeeding day if it is received by e-mail after 9:00 a.m. New York City time. Upon receipt of a Put Notice, each Investor shall promptly provide written confirmation (which may be by e-mail) of receipt of such Put Notice.

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- (c) Put Issuance Limitations. Regardless of the number of Put Shares requested by the Company in the Put Notice, the final number of Put Shares to be issued and sold pursuant to a Put Notice shall be reduced (if at all) in accordance with each of the following limitations:
- (i) Commitment Amount. To the extent a Put Issuance would cause the aggregate number of Put Shares issued and sold to the Investors hereunder to exceed the Commitment Amount, such Put Notice shall be deemed automatically modified, with no further action by the Company, to reduce the number of Put Shares by an amount equal to such excess; provided, that in the event of any such automatic reduction, each Investor will promptly notify the Company of such event.
- (ii) Compliance with Rules of Principal Market. Notwithstanding anything to the contrary herein, the Company shall not effect any sales under this Agreement and no Investor shall have any obligation to purchase shares of Preferred Stock under this Agreement to the extent (but only to the extent) that, after giving effect to such purchase and sale, the aggregate number of Conversion Shares with respect to all the Put Shares theretofore issued under this Agreement (assuming conversion of all of such Put Shares at the Conversion Price then in effect) would exceed 44,931,523 (representing 19.99% of the aggregate amount of Common Shares issued and outstanding as of the date hereof and subject to adjustment for any stock splits, combinations or the like), calculated in accordance with the rules of the Principal Market, which number shall be reduced, on a share-for-share basis, by the number of Common Shares issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the transactions contemplated by this Agreement under the applicable rules of the Principal Market (such maximum number of shares, the “Exchange Cap”). In connection with a Put Notice, any portion of the Put Issuance that would exceed the Exchange Cap shall automatically be withdrawn with no further action required by the Company or the Investors, and such Put Notice shall be deemed automatically modified to reduce the aggregate amount of the requested Put Issuance by an amount equal to such withdrawn portion in respect of such Put Notice.
- (d) Unconditional Contract. Notwithstanding any other provision in this Agreement, but subject in all respects to the limitations set forth in Section 2.01(c), the Company and each Investor acknowledges and agrees that upon such Investor’s receipt of a valid Put Notice from the Company, the Company and such Investor shall be deemed to have entered into an unconditional contract binding on both such Parties for the purchase and sale of such Investor’s allocation of the Put Shares pursuant to such Put Notice in accordance with the terms of this Agreement.

Section 2.02 Closings. The closing of each Put Issuance and each sale and purchase of Put Shares (each, a “Closing”) shall take place as soon as practicable on or after each Put Issuance Date in accordance with the procedures set forth below. In connection with each Closing, the Company and each of the Investors shall fulfill each of its obligations as set forth below:

- (a) On each Put Date, each Investor shall deliver to the Company a written document, in the form attached hereto as Exhibit C (each a “Settlement Document”), setting forth the final number of Put Shares to be purchased by such Investor (taking into account any adjustments pursuant to Section 2.01), the Per Share Purchase Price, the aggregate Purchase Price to be paid by such Investor to the Company for such Put Shares, and a report by Bloomberg, L.P. indicating the VWAP for each of the five (5) consecutive Trading Days prior to the Put Notice Date (or, if not reported on Bloomberg, L.P., another reporting service reasonably agreed to by the parties).
- (b) Promptly after receipt of an Investor’s Settlement Document with respect to each Put Issuance (and, in any event, not later than one Trading Day after such receipt), the Company will, or will cause its transfer agent to, evidence the issuance of the number of Put Shares to be purchased by such Investor (as set forth in the Settlement Document), as held in DRS book-entry form by the transfer agent and registered in the name of such Investor or by such other means of delivery as may be mutually agreed upon by the Company and such Investor, and transmit notification to such Investor that such evidence share issuance has been requested. Promptly upon receipt of such notification, such Investor shall pay to the Company the aggregate Purchase Price of the Put Shares (as set forth in the Settlement Document) in cash in immediately available funds to an account designated by the Company in writing and transmit notification to the Company that such funds transfer has been requested.

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- (c) On or prior to the Put Date, the Company, on the one hand, and each Investor, on the other hand, shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated herein.
- (d) Hardship. In the event the Company provides a Put Notice and an Investor fails to perform its obligations as mandated in Section 2.02, such Investor acknowledges and agrees that irreparable damage may occur in the event of any such default. It is accordingly agreed that, in addition to and in no way limiting the rights and obligations set forth in Article V hereto and in addition to any other remedy to which the Company is entitled at law or in equity, the Company shall be entitled to an injunction or injunctions to prevent such breaches of this Agreement and to specifically enforce (subject to the Securities Act and other rules of the Principal Market), without the posting of a bond or other security or the requirement to prove actual damages, the terms and provisions of this Agreement.

Section 2.03 Completion of Resale Pursuant to the Registration Statement. Each Investor shall notify the Company in writing (which may be by e-mail) once such Investor has completed the subsequent resale of all of its Conversion Shares. After the Investors have purchased the full Commitment Amount and all Investors have so notified the Company of the completion of such subsequent resales of all of their Conversion Shares, the Company will be under no further obligation to maintain the effectiveness of the Registration Statement.

### Article III. Representations and Warranties of each Investor

Each Investor, for itself and for no other Investor, represents and warrants to the Company, as of the Effective Date, as of each Put Notice Date and as of each Put Date that:

Section 3.01 Organization and Authorization. Such Investor is an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation and has the requisite corporate, partnership, limited liability company or similar power and authority to enter into and perform its obligations under this Agreement and to purchase or acquire the Securities in accordance with the terms hereof. The decision to invest and the execution and delivery of this Agreement by such Investor, the performance by such Investor of its obligations hereunder and the consummation by such Investor of the transactions contemplated hereby have been duly authorized and require no other proceedings on the part of such Investor. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of such Investor or its shareholders, partners, members or other equityholders. This Agreement has been duly executed and delivered by such Investor and, assuming the execution and delivery hereof and acceptance thereof by the Company, will constitute the legal, valid and binding obligations of such Investor, enforceable against such Investor in accordance with its terms.

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Section 3.02 Evaluation of Risks. Such Investor has such knowledge and experience in financial, tax and business matters as to be capable of evaluating the merits and risks of, and bearing the economic risks entailed by, an investment in the Securities of the Company and of protecting its interests in connection with the transactions contemplated hereby. Such Investor acknowledges and agrees that its investment in the Company involves a high degree of risk, and that such Investor may lose all or a part of its investment.

Section 3.03 No Legal, Investment or Tax Advice from the Company. Such Investor acknowledges that it had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. Such Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of the Company's representatives or agents for legal, tax, investment or other advice with respect to such Investor's acquisition of the Securities hereunder, the transactions contemplated by this Agreement or the laws of any jurisdiction, and such Investor acknowledges that such Investor may lose all or a part of its investment. Such Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment and the transactions contemplated by the Transaction Documents.

Section 3.04 Investment Purpose. Such Investor is acquiring the Securities for its own account, for investment purposes and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under or exempt from the registration requirements of the Securities Act; provided, however, that by making the representations herein, such Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with, or pursuant to, the Registration Statement filed pursuant to this Agreement or an applicable exemption under the Securities Act. Such Investor does not presently have any agreement or understanding, directly or indirectly, with any Person to sell or distribute any of the Securities. The Investor is acquiring the Securities hereunder in the ordinary course of its business. Such Investor acknowledges that it will be disclosed as an "underwriter" and a "selling stockholder" in each Registration Statement and in any prospectus contained therein to the extent required by applicable law and to the extent the prospectus is related to the resale of Registrable Securities.

Section 3.05 Information. Such Investor and its advisors (and its counsel), if any, have been furnished with all materials relating to the business, finances and operations of the Company and information such Investor deemed material to making an informed investment decision. Such Investor and its advisors (and its counsel), if any, have been afforded the opportunity to ask questions of the Company and its management and have received answers to such questions. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors (and its counsel), if any, or its representatives shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement. Such Investor acknowledges and agrees that the Company has not made to such Investor, and such Investor acknowledges and agrees it has not relied upon, any representations and warranties of the Company, its employees or any third party other than the representations and warranties of the Company contained in this Agreement. Such Investor understands that its investment involves a high degree of risk. Such Investor has sought such accounting, legal and tax advice, as it has considered necessary to make an informed investment decision with respect to the transactions contemplated hereby.

Section 3.06 Not an Affiliate. Such Investor is not an officer, director or a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Company or any "Affiliate" of the Company (as that term is defined in Rule 405 promulgated under the Securities Act).

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Section 3.07 General Solicitation. Neither such Investor, nor any of its Affiliates, nor any person acting on its or their behalf, has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities by such Investor.

Section 3.08 Acknowledgment Regarding Investor's Purchase and Resale of the Conversion Shares. Such Investor represents and warrants that it will resell the Conversion Shares only pursuant to the Registration Statement in which the resale of such Conversion Shares is registered under the Securities Act, in a manner described under the caption "Plan of Distribution" in such Registration Statement, or in a manner in compliance with all Applicable Laws. Such Investor is aware and acknowledges that the Company shall not be able to request Put Issuances under this Agreement if any issuances of Securities pursuant to any Put Issuances would violate any rules of the Principal Market.

#### **Article IV. Representations and Warranties of the Company**

Except as set forth in the SEC Documents, or in the correspondingly numbered section of the Disclosure Schedules that relates to such section or in another section of the Disclosure Schedules to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is applicable to such section, the Company represents and warrants to the Investors that, as of the Effective Date (other than representations and warranties which address matters only as of a certain date, which shall be true and correct as written as of such certain date):

Section 4.01 Organization and Qualification. Each of the Company and its Subsidiaries is an entity duly organized and validly existing under the laws of their respective jurisdiction of organization, and has the requisite power and authority to own its properties and to carry on its business as now being conducted. Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing (to the extent applicable) in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect.

Section 4.02 Authorization, Enforcement, Compliance with Other Instruments. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Certificate of Designations, and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery by the Company of this Agreement and the other Transaction Documents, and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) have been or (with respect to consummation) will be duly authorized by the Company's board of directors and no further consent or authorization will be required by the Company, its board of directors or its shareholders. This Agreement and the other Transaction Documents to which the Company is a party have been (or, when executed and delivered, will be) duly executed and delivered by the Company and, assuming the execution and delivery thereof and acceptance by the Investor, constitute (or, when duly executed and delivered, will be) the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "Transaction Documents" means, collectively, this Agreement, the Certificate of Designations and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

Section 4.03 Authorization of the Securities. The Put Shares to be issued under this Agreement have been, or (i) with respect to the Put Shares to be purchased by the Investors pursuant to a Put Notice, will be, when issued and delivered pursuant to the terms approved by the board of directors of the Company or a duly authorized committee thereof, or a duly authorized executive committee, against payment therefor as provided herein, and (ii) with respect to the Conversion Shares issuable upon the conversion of the Put Shares by the Investor, will be, when issued pursuant to the terms of this Agreement, duly and validly authorized and issued and fully paid and nonassessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights, and with respect to the Conversion Shares only, will be listed for trading on the Principal Market.

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Section 4.04 No Conflict. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) will not (i) result in a violation of the articles of incorporation or other organizational documents of the Company or its Subsidiaries (with respect to consummation, as the same may be amended prior to the date on which any of the transactions contemplated hereby are consummated), (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or its Subsidiaries is a party, or (iii) subject to the receipt of the Required Approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or its Subsidiaries or by which any property or asset of the Company or its Subsidiaries is bound or affected except, in the case of clause (ii) or (iii) above, to the extent such violations that would not reasonably be expected to have a Material Adverse Effect.

Section 4.05 SEC Documents: Financial Statements. Except as previously disclosed to the Investors, since August 30, 2024, the Company has timely filed (giving effect to permissible extensions in accordance with Rule 12b-25 under the Exchange Act) all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the Exchange Act, including, without limitation, the Disclosure Report, the Registration Statement, as the same may be amended from time to time, the Prospectus contained therein and each Prospectus Supplement thereto, and all information contained in such filings and all documents and disclosures that have been or may in the future be incorporated by reference therein (all such documents hereinafter referred to as the “SEC Documents”). The Company has delivered or made available to the Investor through the SEC’s website at <http://www.sec.gov>, true and complete copies of the SEC Documents, as applicable. Except as disclosed in amendments or subsequent filings to the SEC Documents, as of its filing date (or, if amended or superseded by a filing prior to the date hereof, on the date of such amended or superseded filing), each SEC Document complied in all material respects with the requirements of the Exchange Act or the Securities Act, as applicable, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents.

Section 4.06 Financial Statements. The consolidated financial statements of the Company included or incorporated by reference in the SEC Documents, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders’ equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and Exchange Act and in conformity with generally accepted accounting principles in the United States (“GAAP”) applied on a consistent basis (except for (i) such adjustments to accounting standards and practices as are noted therein, (ii) in the case of unaudited interim financial statements, to the extent such financial statements may not include footnotes required by GAAP or may be condensed or summary statements and (iii) such adjustments which are not material, either individually or in the aggregate) during the periods involved; the other financial and statistical data with respect to the Company and the Subsidiaries contained or incorporated by reference in the SEC Documents are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the SEC Documents that are not included or incorporated by reference as required; the Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the SEC Documents (excluding the exhibits thereto); and all disclosures contained or incorporated by reference in the SEC Documents regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the SEC) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the SEC Documents fairly presents the information called for in all material respects and has been prepared in accordance with the SEC’s rules and guidelines applicable thereto.

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Section 4.07 Registration Statement and Prospectus. The Company and the transactions contemplated by this Agreement will, prior to the Filing Deadline, meet the requirements for and comply with the conditions for the use of Form S-3 under the Securities Act. The Registration Statement and the offer and sale of Conversion Shares thereunder as contemplated hereby, when filed, will meet the requirements of Rule 415 under the Securities Act and shall comply in all material respects with said Rule. Any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or a Prospectus, or any amendment or supplement thereto, or to be filed as exhibits to the Registration Statement will be so described or filed. Copies of the Registration Statement, any Prospectus, and any such amendments or supplements thereto and all documents incorporated by reference therein that were filed with the SEC on or prior to the date of this Agreement have been delivered, or are available through EDGAR, to the Investor and its counsel.

Section 4.08 No Misstatement or Omission. The Registration Statement, when it becomes effective, and any Prospectus, on the date of such Prospectus or any amendment or supplement thereto, will conform in all material respects with the requirements of the Securities Act. At each Put Date, the Registration Statement, and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act. The Registration Statement, when it becomes effective, will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. Each Prospectus will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The documents incorporated by reference in a Prospectus or any Prospectus Supplement, and any further documents filed and incorporated by reference therein will not, when filed with the SEC, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such document or necessary to make the statements in such document, in light of the circumstances under which they were made, not misleading. The foregoing shall not apply to statements in, or omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by the Investor specifically for use in the preparation thereof.

Section 4.09 Conformity with Securities Act and Exchange Act. The Registration Statement, each Prospectus, or any amendment or supplement thereto, and the documents incorporated by reference in the Registration Statement, Prospectus or any amendment or supplement thereto, when such documents are filed with the SEC under the Securities Act or the Exchange Act or become effective under the Securities Act, as the case may be, will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable.

Section 4.10 Equity Capitalization. As of the date hereof, the authorized capital of the Company consists of 410,000,000 shares of capital stock, of which 400,000,000 shares are designated common stock, par value \$0.001 per share, and 10,000,000 shares are preferred stock. As of the date hereof, the Company had 44,931,523 shares of common stock outstanding and 364,173 shares of preferred stock outstanding. The Common Shares are registered pursuant to Section 12(b) of the Exchange Act and are currently listed on a Principal Market under the trading symbol “APLD.” The Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Shares under the Exchange Act, delisting the Common Shares from the Principal Market, nor has the Company received any notification that the SEC or the Principal Market is contemplating terminating such registration or listing. To the Company’s knowledge, it is in compliance with all applicable listing requirements of the Principal Market.

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Section 4.11 Intellectual Property Rights. The Company and its Subsidiaries own or possess adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights, if any, necessary to conduct their respective businesses as now conducted, except as would not cause a Material Adverse Effect. The Company and its Subsidiaries have not received written notice of any infringement by the Company or its Subsidiaries of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, or trade secrets, except as would not cause a Material Adverse Effect. To the knowledge of the Company, there is no claim, action or proceeding being made or brought against, or to the Company's knowledge, being threatened against the Company or its Subsidiaries regarding trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other infringement; and, except as would not cause a Material Adverse Effect, the Company is not aware of any facts or circumstances which might give rise to any of the foregoing.

Section 4.12 Employee Relations. Neither the Company nor any of its Subsidiaries is involved in any labor dispute nor, to the knowledge of the Company or any of its Subsidiaries, has any such dispute threatened, in each case which is reasonably likely to cause a Material Adverse Effect.

Section 4.13 Environmental Laws. The Company and its Subsidiaries (i) have not received written notice alleging any failure to comply in all material respects with all Environmental Laws (as defined below), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) have not received written notice alleging any failure to comply with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "Environmental Laws" means all applicable federal, state and local laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

Section 4.14 Title. Except as would not cause a Material Adverse Effect, the Company (or its Subsidiaries) has indefeasible fee simple or leasehold title to its properties and material assets owned by it, free and clear of any pledge, lien, security interest, encumbrance, claim or equitable interest other than such as are not material to the business of the Company. Any real property and facilities held under lease by the Company and its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

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Section 4.15 Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

Section 4.16 Regulatory Permits. Except as would not cause a Material Adverse Effect, the Company and its Subsidiaries possess all material certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to operate their respective businesses as currently conducted, and neither the Company nor any such Subsidiary has received any written notice of proceedings relating to the revocation or modification of any such certificate, authorization or permits.

Section 4.17 Internal Accounting Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences, and management is not aware of any material weaknesses that are not disclosed in the SEC Documents as and when required.

Section 4.18 Absence of Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending against or affecting the Company, the Common Shares or any of the Company's Subsidiaries, wherein an unfavorable decision, ruling or finding would have a Material Adverse Effect.

Section 4.19 Subsidiaries. Except as set forth on Section 4.19 of the Disclosure Schedules, the Company does not presently own or control, directly or indirectly, any interest in any other corporation, partnership, association or other business entity.

Section 4.20 Tax Status. Each of the Company and its Subsidiaries (i) has timely made or filed all foreign, federal and state income and all other material tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply, in each case, except as would not cause a Material Adverse Effect. The Company has not received written notification of any unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company and its Subsidiaries know of no basis for any such claim where failure to pay would cause a Material Adverse Effect.

Section 4.21 Certain Transactions. Except as not required to be disclosed pursuant to Applicable Laws, none of the officers or directors of the Company is presently a party to any transaction with the Company (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer or director, or to the knowledge of the Company, any corporation, partnership, trust or other entity in which any officer or director has a substantial interest or is an officer, director, trustee or partner in each case in excess of \$120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

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Section 4.22 Rights of First Refusal. The Company is not obligated to offer the Preferred Stock offered hereunder on a right of first refusal basis to any third parties including, but not limited to, current or former shareholders of the Company, underwriters, brokers, agents or other third parties.

Section 4.23 Dilution. The Company is aware and acknowledges that issuance of the Conversion Shares could cause dilution to existing shareholders and could significantly increase the outstanding number of Common Shares.

Section 4.24 Acknowledgment Regarding Investor's Purchase of Shares. The Company acknowledges and agrees that each Investor is acting solely in the capacity of an arm's length investor with respect to this Agreement and the transactions contemplated hereunder. The Company further acknowledges that each Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereunder and any advice given by such Investor or any of its representatives or agents in connection with this Agreement and the transactions contemplated hereunder is merely incidental to such Investor's purchase of the Securities hereunder. The Company is aware and acknowledges that it shall not be able to request Put Issuances under this Agreement if any issuances of Securities pursuant to any Put Issuances would violate any rules of the Principal Market. The Company acknowledges and agrees that it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement.

Section 4.25 Finder's Fees. Neither the Company nor any of the Subsidiaries has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, except with respect to Northland Securities, Inc.

Section 4.26 Relationship of the Parties. Neither the Company, nor any of its Subsidiaries, Affiliates, nor any person acting on its or their behalf is a client or customer of any of the Investors or any of their respective Affiliates and none of the Investors nor any of their respective Affiliates has provided, or will provide, any services to the Company or any of its Affiliates, its subsidiaries, or any person acting on its or their behalf. Each Investor's relationship to Company is solely as investor as provided for in the Transaction Documents.

Section 4.27 Compliance with Laws. The Company and each of its Subsidiaries are and have at all times been in compliance with Applicable Laws; the Company has not received a notice of non-compliance, nor knows of, nor has reasonable grounds to know of, any facts that any director, officer, or employee of the Company or any Subsidiary nor, to the Company's knowledge, any agent, Affiliate or other person acting on behalf of the Company or any Subsidiary has, has not complied with Applicable Laws, or could give rise to a notice of non-compliance with Applicable Laws, and is not aware of any pending change or contemplated change to any applicable law or regulation or governmental position; in each case that would have a Material Adverse Effect.

Section 4.28 Sanctions Matters. Neither the Company nor any of its Subsidiaries or, to the knowledge of the Company, any director, officer or controlled Affiliate of the Company or any director or officer of any Subsidiary, is a Person that is, or is owned or controlled by a Person that is (i) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Asset Control ("OFAC"), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authorities, including, without limitation, designation on OFAC's Specially Designated Nationals and Blocked Persons List or OFAC's Foreign Sanctions Evaders List or other relevant sanctions authority (collectively, "Sanctions"), or (ii) located, organized or resident in a country or territory that is the subject of Sanctions that broadly prohibit dealings with that country or territory (including, without limitation, the Crimea, Zaporizhzhia and Kherson regions of Ukraine, the Donetsk People's Republic and Luhansk People's Republic in Ukraine, Cuba, Iran, North Korea, Russia, Sudan and Syria (the "Sanctioned Countries")). Neither the Company nor any of its Subsidiaries will, directly or indirectly, use the proceeds from the sale of Put Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (a) for the purpose of funding or facilitating any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions or is a Sanctioned Country, or (b) in any other manner that will result in a violation of Sanctions or Applicable Laws by any Person (including any Person participating in the transactions contemplated by this Agreement, whether as underwriter, advisor, investor or otherwise). For the past five years, neither the Company nor any of its Subsidiaries has engaged in, and is now not engaged in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions or was a Sanctioned Country. Neither the Company nor any of its Subsidiaries nor any director, officer or controlled Affiliate of the Company or any of its Subsidiaries, has ever had funds blocked by a United States bank or financial institution, temporarily or otherwise, as a result of OFAC concerns.

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Section 4.29 Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Article III, no registration under the Securities Act is required for the offer and sale of the Preferred Stock, or issuance of the Conversion Shares, by the Company to the Investors as contemplated hereby.

Section 4.30 No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Preferred Stock by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Investors and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

#### **Article V. Indemnification**

Each Investor and the Company represent to the other the following with respect to itself:

Section 5.01 Indemnification by the Company. In consideration of each Investor's execution and delivery of this Agreement and acquiring the Put Shares hereunder, and in addition to all of the Company's other obligations under this Agreement, the Company shall defend, protect, indemnify and hold harmless each Investor and each of such Investor's respective officers, directors, managers, members, partners, employees and agents (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) and each person who controls such Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Investor Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable and documented expenses in connection therewith (irrespective of whether any such Investor Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by the Investor Indemnitees or any of them as a result of, or arising out of, or relating to (a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Shares as originally filed or in any amendment thereof, or in any related prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Investor specifically for inclusion therein; or (b) any material breach of any material covenant, material agreement or material obligation of the Company contained in this Agreement or any other certificate, instrument or document contemplated hereby or thereby. To the extent that the foregoing undertaking by the Company may be unenforceable under Applicable Law, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under Applicable Law.

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Section 5.02 Indemnification by each Investor. In consideration of the Company's execution and delivery of this Agreement, and in addition to all of each Investor's other obligations under this Agreement, each Investor, severally and not jointly with any other Investor, shall defend, protect, indemnify and hold harmless the Company and all of its officers, directors, shareholders, employees and agents (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) and each person who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Company Indemnitees") from and against any and all Indemnified Liabilities incurred by the Company Indemnitees or any of them as a result of, or arising out of, or relating to (a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Conversion Shares as originally filed or in any amendment thereof, or in any related prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that such Investor will only be liable for written information relating to such Investor furnished to the Company by or on behalf of such Investor specifically for inclusion in the documents referred to in the foregoing indemnity, and will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to such Investor by or on behalf of the Company specifically for inclusion therein; or (b) any breach of any covenant, agreement or obligation of such Investor contained in this Agreement or any other certificate, instrument or document contemplated hereby or thereby executed by such Investor. To the extent that the foregoing undertaking by such Investor may be unenforceable under Applicable Laws, such Investor shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under Applicable Laws.

Section 5.03 Notice of Claim. Promptly after receipt by an Investor Indemnitee or Company Indemnitee of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Investor Indemnitee or Company Indemnitee, as applicable, shall, if a claim for an Indemnified Liability in respect thereof is to be made against any indemnifying party under this Article V, deliver to the indemnifying party a written notice of the commencement thereof; but the failure to so notify the indemnifying party will not relieve it of liability under this Article V except to the extent the indemnifying party is

prejudiced by such failure. The indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually reasonably satisfactory to the indemnifying party and the Investor Indemnitee or Company Indemnitee, as the case may be; provided, however, that an Investor Indemnitee or Company Indemnitee shall have the right to retain its own counsel with the actual and reasonable third party fees and expenses of not more than one counsel for such Investor Indemnitee or Company Indemnitee to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Investor Indemnitee or Company Indemnitee and the indemnifying party would be inappropriate due to actual or potential differing interests between such Investor Indemnitee or Company Indemnitee and any other party represented by such counsel in such proceeding. The Investor Indemnitee or Company Indemnitee shall cooperate fully with the indemnifying party in connection with any negotiation or defense of any such action or claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Investor Indemnitee or Company Indemnitee which relates to such action or claim. The indemnifying party shall keep the Investor Indemnitee or Company Indemnitee reasonably apprised as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Investor Indemnitee or Company Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Investor Indemnitee or Company Indemnitee of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Investor Indemnitee or Company Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The indemnification required by this Article V shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received and payment therefor is due.

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## **Article VI. Covenants**

The Company covenants with the Investors, and each Investor for itself and for no other Investor, covenants with the Company, as follows, which covenants of one party are for the benefit of the other party, during the Commitment Period, unless otherwise specified:

### **Section 6.01 Transfer Restrictions.**

- (a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) pursuant to Rule 144, (iii) to the Company or (iv) to an Affiliate of an Investor which is controlled by such Investor or under common control with such Investor, the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee (other than a non-Affiliate transferee of the Conversion Shares) shall agree in writing to be bound by the terms of this Agreement and the Transaction Documents and shall have the rights and obligations of an Investor under this Agreement and the Transaction Documents. For the avoidance of doubt and notwithstanding anything to the contrary herein, no transferee of Common Stock obtained by an Investor upon conversion of the Put Shares (other than an Affiliate of such Investor) hereunder shall be subject to or bound by any of the Transaction Documents, and the Company shall not attempt to subject or bind any such transferee. Each Investor hereby covenants and agrees not to effect any sale or other transfer of the Securities other than (i) pursuant to the plan of distribution contained in the Registration Statement, (ii) in accordance with the provisions of Rule 144, or (iii) in compliance with another exemption from registration under the Securities Act and applicable state securities laws.
- (b) Each Investor agrees to the imprinting, so long as is required by this Section 6.01 of a legend on any of the Securities in the following form:

"[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE] [HAS BEEN] [HAS NOT BEEN] REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES."

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- (c) Certificates or book-entries evidencing the Conversion Shares shall not contain any legend (including the legend set forth in Section 6.01(b) hereof), (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Conversion Shares pursuant to Rule 144, or (iii) if such Conversion Shares are eligible for sale under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144. The Company agrees that following the effectiveness of the initial Registration Statement or at such time as such legend is no longer required under this Section 6.01(c), it will, as soon as reasonably practicable following the delivery by an Investor to the Company or the Transfer Agent of a certificate, book entry statement or other instrument representing the Conversion Shares, as the case may be, issued with a restrictive legend (such date, the "Legend Removal Date"), deliver or cause to be delivered to such Investor a certificate, book entry statement or other instrument representing such Conversion Shares are free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the transfer agent that enlarge the restrictions on transfer set forth in this Section 6.01. Certificates, book entry statements or other instruments for Conversion Shares subject to legend removal hereunder shall be transmitted by the transfer agent to the Investor by crediting the account of the Investor's prime broker with the Depository Trust Company System as directed by such Investor.
- (d) In addition to such Investor's other available remedies, the Company shall pay to such Investor, in cash, (i) as partial liquidated damages and not as a penalty, for each \$1,000 of Conversion Shares (based on the VWAP of the Common Stock on the date such Conversion Shares and subject to Section 6.01(c)), \$10 per Trading Day (increasing to \$20 per Trading Day three (3) Trading Days after the Legend Removal Date) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend, up to an aggregate amount of 10% in respect of each \$1,000 of Conversion Shares and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to such Investor by the Legend Removal Date a certificate representing the Conversion Shares so delivered to the Company by such Investor that is free from all restrictive and other legends and (b) if after the Legend Removal Date such Investor purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Investor of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that such Investor anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such Investor's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) over the product of (A) such number of Conversion Shares that the Company was required to deliver to such Investor by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Investor to the Company of the applicable Conversion Shares and ending on the date of such delivery and payment under this clause (ii).

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- (a) The Registration Statement. Subject to the terms and conditions of this Agreement, the Company shall (i) as soon as practicable after June 2, 2025, but in no case later than June 9, 2025 (the “Filing Deadline”), prepare and file with the SEC an initial Registration Statement covering the resale by the Investors of at least 18,352,942 Common Shares to be issued upon conversion of the Put Shares issuable pursuant to the Initial Put Issuance in accordance with applicable SEC rules, regulations and interpretations so as to permit the resale of such Common Shares by the Investors under Rule 415 at then prevailing market prices (and not fixed prices); provided, that to the extent permissible under the SEC rules, regulations and interpretations, the Company may initially register additional Common Shares to be issued upon conversion of Put Shares issuable hereunder pursuant to subsequent Put Issuances on the same Registration Statement. The Company shall file additional Registration Statement(s), to the extent applicable, in connection with subsequent Put Issuances to register the Common Shares to be issued upon conversion of the Put Shares issued pursuant to such subsequent Put Issuances, in accordance with the terms and procedures applicable to the initial Registration Statement. The Company shall use its commercially reasonable efforts to have the Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the seventy-fifth (75<sup>th</sup>) calendar day following the initial filing hereof (or, in the event of a “full review” by the one hundred twentieth (120<sup>th</sup>) calendar day following the initial filing thereof) (the “Effectiveness Deadline”). The Company shall file with the SEC in accordance with and within the time period prescribed under Rule 424 under the Securities Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement.
- (b) Registration Procedures. During the Registration Period, subject to an Allowable Grace Period (as defined below) or suspension of the Registration Statement pursuant to Section 6.03, the Company shall (i) promptly prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the Prospectus used in connection with the Registration Statement, which Prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, (ii) prepare and file with the SEC additional Registration Statements in order to register for resale under the Securities Act all of the Conversion Shares in accordance with the terms of this Agreement; (iii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and as so supplemented or amended to be filed pursuant to Rule 424; (iv) respond as promptly as reasonably practicable, and within the compliance period prescribed by the SEC, to any comments received from the SEC with respect to the Registration Statement or any amendment thereto and as promptly as reasonably practicable provide each Investor true and complete copies of all correspondence from and to the SEC relating to the Registration Statement (provided that the Company may excise any information contained therein which would constitute material non-public information as to any Investor which has not executed a confidentiality agreement with the Company); and (v) comply with the provisions of the Securities Act with respect to the disposition of all Securities of the Company covered by such Registration Statement until such time as all of such Securities shall have been disposed of in accordance with the intended methods of disposition by the Investor thereof as set forth in such Registration Statement. In the case of amendments and supplements to the Registration Statement which are required to be filed pursuant to this Agreement by reason of the Company's filing a report on Form 10-K, Form 10-Q, or Form 8-K or any analogous report under the Securities Exchange Act, the Company shall incorporate such report by reference into the Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the Exchange Act report is filed which created the requirement for the Company to amend or supplement the Registration Statement.

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- (c) Filing Procedures. Not less than one (1) Business Day prior to the filing of the Registration Statement and not less than one (1) Business Day prior to the filing of any related amendments and supplements to any Registration Statement (except for any amendments or supplements caused by the filing of any annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, and any similar or successor reports), the Company shall furnish to each Investor copies of all such documents proposed to be filed, which documents (other than those filed pursuant to Rule 424 promulgated under the Securities Act) will be subject to the reasonable and prompt review of such Investor. Each Investor shall furnish comments on the Registration Statement and any related amendment and supplement to the Registration Statement to the Company within twenty four (24) hours of the receipt thereof. If an Investor fails to provide comments to the Company within such twenty four (24) hour period, then the Registration Statement, related amendment or related supplement, as applicable, shall be deemed accepted by such Investor in the form originally delivered by the Company to such Investor.
- (d) Delivery of Final Documents. The Company shall furnish to each Investor without charge, (i) at least one copy of the Registration Statement as declared effective by the SEC and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, all exhibits and each preliminary prospectus, (ii) at the request of such Investor, at least one copy of the final prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents as such Investor may reasonably request from time to time in order to facilitate the disposition of the Common Shares owned by such Investor pursuant to the Registration Statement. Filing of the foregoing with the SEC via its EDGAR system shall satisfy the requirements of this Section 6.02(d).
- (e) Allowable Grace Period. Notwithstanding anything to the contrary contained herein, upon the advice of Company Counsel, for not more than fifteen (15) consecutive days or for a total of not more than forty-five (45) days in any twelve (12) month period, the Company may suspend the use of any Prospectus included in any Registration Statement contemplated by this Agreement in the event that the Company determines in good faith that such suspension is necessary to (A) delay the disclosure of material nonpublic information concerning the Company, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company or (B) amend or supplement the affected Registration Statement or the related Prospectus so that such Registration Statement or Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the case of the Prospectus in light of the circumstances under which they were made, not misleading (an “Allowed Grace Period”); provided, that the Company shall promptly (a) notify each Investor in writing of the commencement (and the termination) of an Allowed Grace Period, but shall not (without the prior written consent of such Investor) disclose to such Investor any material nonpublic information giving rise to an Allowed Grace Period, (b) advise each Investor in writing to cease all sales under such Registration Statement until the end of the Allowed Grace Period, and (c) use its best efforts to terminate an Allowed Grace Period as promptly as practicable.

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- (f) No Inclusion of Other Securities; Prohibition on Filing Other Registration Statements. In no event shall the Company include any securities other than the Registrable Securities on any Registration Statement filed pursuant to Section 6.02(a) of this Agreement without the prior written consent of the Investors then holding a majority of the Registrable Securities outstanding as of the Filing Date of such Registration Statement. Except as permitted by this Section 6.02(f), from and after the date of this Agreement until the earlier of (a) the date on which all the Conversion Shares have been sold or may be sold without any restrictions pursuant to Rule 144 or (b) the date on which the Registration Statement is declared effective by the SEC, the Company shall not file with SEC any registration statement covering Common Stock, other than (i) a “universal” shelf registration statement on Form S-3 (or any successor form permitting the registration of securities to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act) (a “Universal Shelf Registration Statement”), and any post-effective amendment thereto, and (ii) registration statements on Form S-8 (or any successor forms) filed in connection with an employee benefit or dividend reinvestment plan; provided, however, the Company further agrees that, until the thirtieth (30<sup>th</sup>) calendar day after the date on which the Registration Statement has been declared effective by the SEC, the Company will not issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock under any Universal Shelf Registration Statement (or any prospectus or prospectus supplement filed in connection therewith) unless the prior written consent of a majority-in-interest of the Investors (as determined based on their respective Allocation Percentages) has been obtained. Nothing contained in this Section 6.02(f) shall effect the Company's ability to issue, or agree to issue, securities exempt from registration under the Securities Act.

- (a) Establishment of a Black Out Period. During the Registration Period, the Company from time to time may suspend the use of the Registration Statement by written notice (e-mail being sufficient) to the Investors in the event that the Company determines in good faith that such suspension is necessary to amend or supplement the Registration Statement or Prospectus so that such Registration Statement or Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (a “Black Out Period”).
- (b) No Sales by Investors During the Black Out Period. During such Black Out Period, each Investor agrees not to sell any Registrable Securities pursuant to such Registration Statement.
- (c) Limitations on the Black Out Period. The Company shall not impose any Black Out Period that is longer than twenty (20) calendar days or in a manner that is more restrictive (including, without limitation, as to duration) than the comparable restrictions that the Company may impose on transfers of the Company’s equity securities by its directors and senior executive officers. In addition, the Company shall not deliver any Put Notice during any Black Out Period. If the public announcement of such material, nonpublic information is made during a Black Out Period, the Black Out Period shall terminate at 8:59 a.m. New York time on the Trading Day immediately following such announcement, and the Company shall use commercially reasonable efforts to immediately notify each Investor of the termination of the Black Out Period.

Section 6.04 Opinion of Counsel. Prior to the date of the delivery by the Company of the Put Notice in respect of the Initial Put Issuance, the Investors shall have received an opinion letter from Company Counsel in customary form and substance reasonably satisfactory to each Investor.

Section 6.05 Exchange Act Registration. During the Commitment Period, the Company will file in a timely manner all reports and other documents required of it as a reporting company under the Exchange Act and will not take any action or file any document (whether or not permitted by Exchange Act or the rules thereunder) to terminate or suspend its reporting and filing obligations under the Exchange Act.

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Section 6.06 Transfer Agent Instructions. During the Commitment Period (or such shorter time as permitted by Section 2.04 of this Agreement) and subject to Applicable Laws, the Company shall cause (including, if necessary, by causing Company Counsel to deliver an opinion) the transfer agent for the Common Shares to remove restrictive legends from the Conversion Shares upon each conversion pursuant to the Transaction Documents, provided that Company Counsel shall have been furnished with such documents as they may require for the purpose of enabling them to render the opinions or make the statements requested by the transfer agent, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the covenants, obligations or conditions, contained herein.

Section 6.07 Corporate Existence. The Company will use commercially reasonable efforts to preserve and continue the corporate existence of the Company during the Commitment Period.

Section 6.08 Notice of Certain Events Affecting Registration: Suspension of Right to Make a Put Issuance. Subject to the limitations on sharing material, non-public information with each Investor under Section 6.12, the Company will promptly notify each Investor, and confirm in writing (e-mail being sufficient), upon its becoming aware of the occurrence of any of the following events in respect of the Registration Statement or related Prospectus (in each of which cases the information provided to each Investor will be kept strictly confidential): (i) except for requests made in connection with SEC investigations, receipt of any request for additional information by the SEC or any other Federal or state governmental authority during the period of effectiveness of the Registration Statement or any request for amendments or supplements to the Registration Statement or related Prospectus in each case, that relate to the Registration Statement; (ii) the issuance by the SEC or any other Federal governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Conversion Shares for sale in any jurisdiction or the initiation or written threat of any proceeding for such purpose; (iv) the happening of any event (but not the substance of the event itself) that makes any statement made in the Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the related Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or of the necessity to amend the Registration Statement or supplement a related Prospectus to comply with the Securities Act or any other law (and the Company will promptly make available to each Investor any such supplement or amendment to the related Prospectus); (v) the Company’s reasonable determination that a post-effective amendment to the Registration Statement would be required under Applicable Law; (vi) the Common Shares shall cease to be authorized for listing on the Principal Market; or (vii) the Company fails to file in a timely manner all reports and other documents required of it as a reporting company under the Exchange Act (giving effect to Rule 12b-25). The Company shall not deliver to any Investor any Put Notice, and the Company shall not sell any Put Shares pursuant to any pending Put Notice (other than as required pursuant to Section 2.02(d)), during the continuation of any of the foregoing events (each of the events described in the immediately preceding clauses (i) through (vii), inclusive, a “Material Outside Event”).

Section 6.09 Consolidation. If a Put Notice has been delivered to the Investors, then the Company shall not effect any consolidation of the Company with or into, or a transfer of all or substantially all the assets of the Company to, another entity before the transaction contemplated in such Put Notice has been closed in accordance with Section 2.02 hereof, and all Put Shares in connection with such Put Issuance have been received by the Investors.

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Section 6.10 Issuance of Put Shares and Conversion Shares. The issuance and sale of the Put Shares and the issuance of the Conversion Shares to each Investor under the Transaction Documents shall be made in accordance with the provisions and requirements of Section 4(a)(2) of the Securities Act and any applicable state securities law.

Section 6.11 Expenses. The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay all expenses incident to the performance of its obligations hereunder, including but not limited to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each prospectus and of each amendment and supplement thereto, (ii) the preparation, issuance and delivery of any Put Shares issued pursuant to this Agreement, (iii) all fees and disbursements of the Company Counsel, accountants and other advisors (but not, for the avoidance doubt, the fees and disbursements of each Investor’s counsel, accountants and other advisors), (iv) the qualification of the Put Shares under securities laws in accordance with the provisions of this Agreement, including filing fees in connection therewith, (v) the printing and delivery of copies of any prospectus and any amendments or supplements thereto requested by the Investors, (vi) the fees and expenses incurred in connection with the listing or qualification of the Conversion Shares for trading on the Principal Market, and (vii) filing fees of the SEC and the Principal Market.

Section 6.12 Disclosure Report. The Company shall, not later than 5:30 p.m. New York City time, on the fourth (4<sup>th</sup>) Business Day after the date of this Agreement, file with the SEC a Current Report on Form 8-K disclosing the execution of this Agreement by the Company and the Investors (including any exhibits thereto, the “Disclosure Report”). The Company shall provide each Investor and its legal counsel a reasonable opportunity to comment on any description of this Agreement contained in a draft of the Disclosure Report, including any exhibit to be filed related thereto, as applicable, prior to filing the Disclosure Report with the SEC and shall reasonably consider all, but shall have no obligation to accept any, such comments. From and after the filing of the Disclosure Report with the SEC, the Company shall have publicly disclosed all material, non-public information delivered to each Investor (or such Investor’s representatives or agents) by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees, agents or representatives (if any) in connection with the transactions contemplated by the Transaction Documents. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, at any time prior to the termination of the Agreement, provide



an Investor with any material, non-public information regarding the Company or any of its Subsidiaries without the express prior written consent of such Investor (which may be granted or withheld in such Investor's sole discretion); it being understood that the mere notification of an Investor required pursuant to clause (iv) of Section 6.08 shall not in and of itself be deemed to be material, non-public information. The Company understands and confirms that each Investor will rely on the foregoing representations in effecting resales of Conversion Shares under the Registration Statement. In addition, effective upon the filing of the Disclosure Report, the Company acknowledges and agrees that any and all confidentiality or similar obligations with respect to the transactions contemplated by the Transaction Documents under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, Affiliates, employees or agents, on the one hand, and each Investor or any of its respective officers, directors, Affiliates, employees or agents, on the other hand, shall automatically, without further action, notice or deed, terminate.

**Section 6.13 Put Notice Limitation.** The Company shall not deliver a Put Notice if a shareholder meeting or corporate action, or the record date for any shareholder meeting or any corporate action, would fall during the period beginning two (2) Trading Days prior to the date of delivery of such Put Notice and ending two (2) Trading Days following the Closing of such Put Issuance.

**Section 6.14 Use of Proceeds.** The proceeds from the sale of the Put Shares by the Company for working capital and general corporate purposes. Neither the Company nor any Subsidiary will, directly or indirectly, use the proceeds of the transactions contemplated herein, or lend, contribute, facilitate or otherwise make available such proceeds to any Person (i) to fund, either directly or indirectly, any activities or business of or with any Person that is identified on the list of Specially Designated Nationals and Blocker Persons maintained by OFAC, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or Sanctions Programs or (ii) in any other manner that will result in a violation of Sanctions or Applicable Laws.

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**Section 6.15 Compliance with Laws.** During the Commitment Period, the Company shall comply in all material respects with all Applicable Laws.

**Section 6.16 Market Activities.** During the Commitment Period, neither the Company, nor any Subsidiary, nor any of their respective officers, directors or controlling persons will, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute or result, in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of shares of Preferred Stock or Common Shares, (ii) sell, bid for, or purchase shares of Preferred Stock or Common Shares in violation of Regulation M, or pay anyone any compensation for soliciting purchases of shares of Preferred Stock or Common Shares.

**Section 6.17 Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. No Party shall have any power or any right to assign or transfer, in whole or in part, this Agreement, or any of its rights or any of its obligations hereunder, including, without limitation, any right to pursue any claim for damages pursuant to this Agreement or the transactions contemplated herein, or to pursue any claim for any breach or default of this Agreement, or any right arising from the purported assignor's due performance of its obligations hereunder, without the prior written consent of the other Party and any such purported assignment in contravention of the provisions herein shall be null and void and of no force or effect. Without the consent of the Investors holding a majority of the Put Shares then outstanding, the Company shall not have the right to assign or transfer any of its rights, or provide any third party the right to bind or obligate the Company, to deliver Put Notices or effect Put Issuances hereunder.

**Section 6.18 No Variable Rate Transactions.** From the date hereof until the earlier of (i) expiration or valid termination of this Agreement and (ii) the one hundred twentieth (120<sup>th</sup>) day after the date on which the Registration Statement has been declared effective by the SEC, the Company shall not effect or enter into an agreement to effect a Variable Rate Transaction, except with the prior written consent of a majority-in-interest of the Investors (as determined based on their respective Allocation Percentages).

**Section 6.19 Chief Executive Officer.** If at any time Wesley Cummins (or any of his successors) ceases to serve as the Chief Executive Officer of the Company for any reason, the Company shall deliver a written notice of such event to the Investors (a "CEO Change Notice"), which CEO Change Notice shall identify the successor Chief Executive Officer of the Company. If a majority in interest of the Investors (as determined based on their respective Allocation Percentages) have not notified the Company, in a writing delivered on or before the date that is five (5) Business Days after delivery of a CEO Change Notice, that the successor Chief Executive Officer of the Company is not an acceptable successor, then the successor Chief Executive Officer of the Company named in the CEO Change Notice shall be deemed to be an Acceptable CEO for all purposes of this Agreement. Each Investor's determination as to whether or not a successor Chief Executive Officer is acceptable shall be made by such Investor in its sole discretion. If at any time an Acceptable CEO is not serving as the Chief Executive Officer of the Company, the Company shall have no right to deliver a Put Notice, and the Investors shall have no obligation to fund any Put Issuance.

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## **Article VII.**

### **Conditions for Delivery of Put Notice**

**Section 7.01 Conditions Precedent to the Right of the Company to Deliver a Put Notice** The right of the Company to deliver a Put Notice and the obligations of each Investor hereunder with respect to a Put Issuance are subject to the satisfaction by the Company or waiver by such Investor, on each Put Notice Date (a "Condition Satisfaction Date"), of each of the following conditions:

- (a) **Accuracy of the Company's Representations and Warranties.** The representations and warranties of the Company in this Agreement shall be true and correct in all material respects as of the Put Notice Date (other than representations and warranties which address matters only as of a certain date, which shall be true and correct as written as of such certain date).
- (b) **SEC Documents.** The Company shall have filed with the SEC in a timely manner all reports, notices and other documents required under the Exchange Act and applicable SEC regulations during the twelve-month period immediately preceding the applicable Condition Satisfaction Date, except as previously disclosed to the Investor.
- (c) **No Material Outside Event; No Black Out Period.** With respect to each Put Notice delivered after the date on which the Registration Statement has been declared effective by the SEC, (i) no Material Outside Event shall have occurred and then be continuing and (ii) to the extent that the Put Issuance would result in the Investors holding more than an aggregate of \$75,000,000 in Stated Value of Put Shares, a Black Out Period shall not be in effect.
- (d) **Board.** (i) The board of directors of the Company shall have duly and validly approved the transactions contemplated by the Transaction Documents, (ii) such approval shall not have been amended, rescinded or modified and shall remain in full force and effect as of the applicable Condition Satisfaction Date, and (iii) a true, correct and complete copy of such approval shall have been provided to such Investor.
- (e) **Performance by the Company.** The Company shall have performed, satisfied and complied in all material respects with all covenants and agreements required by this Agreement to be performed, satisfied or complied with by the Company at or prior the applicable Condition Satisfaction Date.
- (f) **No Injunction.** No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits or materially and adversely affects any of the transactions contemplated by this Agreement.

- (g) No Suspension of Trading in or Delisting of Common Shares. (i) Trading in the Common Shares is not then suspended by the SEC, the Principal Market or FINRA, and (ii) the Company shall not have received any final and non-appealable notice that the listing or quotation of the Common Shares on the Principal Market shall be terminated on a date certain (unless, prior to such date certain, the Common Shares are listed or quoted on any subsequent Principal Market), nor shall there have been imposed and continuing any suspension of, or restriction on, accepting additional deposits of the Common Shares, electronic trading or book-entry services by DTC with respect to the Common Shares that is continuing.
- (h) Authorized Common Shares; Exchange Cap. Immediately prior to giving effect to such purchase and sale, there shall be (x) at least a number of authorized and unissued, and not otherwise subject to contractual reserve, Common Shares and (y) at least a number of authorized but unissued Common Shares remaining under the Exchange Cap, in each case of clause (x) and (y), equal to 110% of the number of Conversion Shares issuable in respect of the Put Shares (assuming conversion of the Put Shares at the Conversion then in effect).

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- (i) Trading Price. The lowest daily VWAP for each of the five (5) consecutive Trading Days prior to the Put Notice Date shall equal or exceed 110% of the Floor Price then in effect; provided, however, if the Floor Price has been reduced in accordance with the Certificate of Designations, then, unless the most recent reduction of the Floor Price was agreed to or ratified by a majority-in-interest of the Investors (as determined based on their respective Allocation Percentages), at least five (5) Trading Days shall have elapsed since the most recent reduction of the Floor Price.
- (j) Consecutive Put Notices. Except with respect to the first Put Notice, the Company shall have delivered all Put Shares relating to all prior Put Issuances.
- (k) Certificate of Designations. Prior to or concurrently with the delivery of the Put Notice for the Initial Put Issuance, the Company shall have duly adopted and filed the Certificate of Designations with the Secretary of State of the State of Nevada, and a certified copy thereof shall have been delivered to the Investor.
- (l) Key Man. An Acceptable CEO shall, on the Put Notice Date, be serving as the Chief Executive Officer of the Company.
- (m) Fundamental Transaction. The Company shall not have entered into any definitive agreement to consummate a Fundamental Transaction.

#### **Article VIII. Non Exclusive Agreement**

Notwithstanding anything contained herein, except as expressly set forth in Section 6.02(f), this Agreement and the rights awarded to each Investor hereunder are non-exclusive, and the Company may, at any time throughout the term of this Agreement and thereafter, among other things, issue and allot, or undertake to issue and allot, any shares and/or securities and/or convertible notes, bonds, debentures, options to acquire shares or other securities and/or other facilities which may be converted into or replaced by Common Shares or other securities of the Company, redeem, repurchase, repay, retire or other extinguish any such shares and/or securities and/or convertible notes, bonds, debentures, options to acquire shares or other securities and/or other facilities, extend, renew and/or recycle any bonds and/or debentures, and/or grant any rights with respect to its existing and/or future share capital.

#### **Article IX. Choice of Law/Jurisdiction**

This Agreement, and any and all claims, proceedings or causes of action relating to this Agreement or arising from this Agreement or the transactions contemplated herein, including, without limitation, tort claims, statutory claims and contract claims, shall be interpreted, construed, governed and enforced under and solely in accordance with the substantive and procedural laws of the State of New York, in each case as in effect from time to time and as the same may be amended from time to time, and as applied to agreements performed wholly within the State of New York. The Parties further agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

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EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN, THE PERFORMANCE THEREOF OR THE FINANCINGS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

#### **Article X. Termination**

##### **Section 10.01 Termination.**

- (a) Unless earlier terminated as provided hereunder, this Agreement shall terminate automatically on the earliest of (i) April 30, 2028, (ii) the date on which the Investors shall have made payment of the aggregate Purchase Price for Put Issuances pursuant to this Agreement equal to the Commitment Amount, or (iii) such time as there ceases to be a sufficient number of authorized but unissued Common Shares remaining under the Exchange Cap to enable the Company to satisfy the condition set forth in Section 7.01(h) with respect to any Put Notice that may otherwise be delivered in accordance with Article II.
- (b) The Company may terminate this Agreement effective upon prior written notice to the Investors; provided that there are no outstanding Put Notices, the shares of Preferred Stock under which have yet to be issued. This Agreement may be terminated at any time by written consent of the Company and, to the extent any Put Shares are then outstanding, the Investors holding a majority of such Put Shares then outstanding, effective as of the date of such written consent unless otherwise provided in such written consent.
- (c) Nothing in this Section 10.01 shall be deemed to release the Company or any Investor from any liability for any breach under this Agreement prior to the valid termination hereof, or to impair the rights of the Company, on the one hand, and each Investor, on the other hand, to compel specific performance by the other Party of its obligations under this Agreement prior to the valid termination hereof. The indemnification provisions contained in Article V shall survive the termination of this Agreement, provided that the representations and warranties, and the other covenants, made or agreed to by the Parties in this Agreement, shall automatically, without further action, notice or deed, be of no further force or effect upon such termination.

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**Article XI.  
Notices**

Other than with respect to Put Notices, which must be in writing delivered in accordance with Section 2.01(b) and will be deemed delivered on the day set forth in Section 2.01(b), any notices, consents, waivers, or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by e-mail if sent on a Trading Day, or, if not sent on a Trading Day, on the immediately following Trading Day; (iii) five (5) days after being sent by U.S. certified mail, return receipt requested, or (iv) one (1) day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses for such communications (except for Put Notices which shall be delivered in accordance with Exhibit B hereof) shall be:

If to the Company, to:

Applied Digital Corporation  
3811 Turtle Creek Blvd., Suite 2100  
Dallas, TX 75219  
Attention: Wes Cummins  
Telephone: (214) 427-1704  
Email: Wes@applieddigital.com

With a copy to (which shall not constitute notice or delivery of process) to:

Lowenstein Sandler LLP  
1251 Avenue of the Americas  
New York, New York 10020-1095  
Attention: Steven E. Siesser, Esq.  
Telephone: (212) 204-8688  
Email: ssiesser@lowenstein.com

If to the Investors:

As set forth on the signature pages attached hereto

or at such other address and/or e-mail and/or to the attention of such other person as the recipient party has specified by written notice given to each other party three (3) Business Days prior to the effectiveness of such change. Written confirmation of receipt (i) given by the recipient of such notice, consent, waiver or other communication, (ii) electronically generated by the sender's email service provider containing the time, date, and recipient email address or (iii) provided by a nationally recognized overnight delivery service shall be rebuttable evidence of personal service in accordance with clause (i), (ii) or (iii) above, respectively.

**Article XII.  
Miscellaneous**

Section 12.01 Counterparts. This Agreement may be executed in identical counterparts, both which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. Facsimile or other electronically scanned and delivered signatures (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com), including by e-mail attachment, shall be deemed to have been duly and validly delivered and be valid and effective for all purposes of this Agreement.

Section 12.02 Entire Agreement; Amendments. This Agreement supersedes all other prior oral or written agreements between the Investors, the Company, their respective Affiliates and persons acting on their behalf with respect to the matters discussed herein, and this Agreement contains the entire understanding of the parties with respect to the matters covered herein and, except as specifically set forth herein, neither the Company nor any of the Investors makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the parties to this Agreement.

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Section 12.03 Reporting Entity for the Common Shares. The reporting entity relied upon for the determination of the trading price or trading volume of the Common Shares on any given Trading Day for the purposes of this Agreement shall be Bloomberg, L.P. or any successor thereto. The written mutual consent of the Company and the Investors holding a majority of the Put Shares then outstanding, if any shall be required to employ any other reporting entity.

Section 12.04 Expenses. Except as expressly set forth in this Agreement to the contrary, each of the Parties shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) in connection with this Agreement and the transactions contemplated hereby.

Section 12.05 Taxes.

- (a) The applicable Investor shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of Put Shares or Conversion Shares or other Securities pursuant hereto or certificates representing such shares or securities. Furthermore, in the case of conversion of Put Shares, the Company shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of Conversion Shares or other securities to a beneficial owner other than the beneficial owner of the Put Shares immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid or is not payable.
- (b) The Company and its Affiliates and agents shall be entitled to deduct and withhold from the amounts deliverable pursuant to the Transaction Documents (including any Put Shares or Conversion Shares otherwise issuable with respect thereto) and all payments and distributions (or deemed distributions) on the Put Shares (and on the Conversion Shares received upon their conversion) such amounts, if any, as are required to be deducted and withheld under the Internal Revenue Code of 1986, as amended, or any other applicable tax law. To the extent that amounts are so deducted and withheld and duly paid over to the appropriate tax authority, such withheld amounts shall be treated for all purposes of the Transaction Documents as having been delivered to the Person in respect of whom such deduction and withholding was made. The Put Shares may only be held by, and may only be transferred to, an Investor that delivers to the Company an Internal Revenue Service Form W-9 or appropriate version of Internal Revenue Service Form W-8, as applicable. Furthermore, each Person holding Put Shares shall, upon request, use its commercially reasonable efforts to provide the applicable withholding agent with all necessary tax forms, including a duly executed Internal Revenue Service Form W-9 or appropriate version of Internal Revenue Service Form W-8, as applicable. Prior to withholding any amounts pursuant to this Section 12.05(b), the Company (and its Affiliates and agents) shall use commercially reasonable efforts to notify such Investor, and the Company and such Investor shall cooperate in good faith to reduce or eliminate any such withholding.

Section 12.06 Brokerage. Each of the Parties represents that it has had no dealings in connection with this transaction with any finder or broker who will demand payment of any fee or commission from the other party, other than Northland Securities, Inc. The Company on the one hand, and each Investor, on the other hand, agree to indemnify the other against and hold the other harmless from any and all liabilities to any person claiming brokerage commissions or finder's fees on account of services purported to have been rendered on behalf of the indemnifying party in connection with this Agreement or the transactions contemplated hereby.

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Section 12.07 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance or non-performance of the obligations of any other Investor under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. Notwithstanding anything to the contrary herein, the sole recourse of each Investor in the event of any breach by the Company of the representations and warranties made in Article IV, in each case, as determined by a court of competent jurisdiction, shall be for such Investor to be relieved of its obligation to purchase any further shares of Preferred Stock under this Agreement, and each Investor hereby waives, to the fullest extent permitted by law, any and all claims, actions, suits, damages, liabilities, costs, and expenses (including, without limitation, attorneys' fees and expenses) arising out of or relating to any such breach by the Company, except for the right to be relieved of its obligation to purchase any further shares of Preferred Stock under this Agreement as provided herein. Each Investor has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Investor and its respective counsel have chosen to communicate with the Company through Company Counsel. Company Counsel does not represent any of the Investors and only represents the Company. The Company has elected to provide all Investors with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Investors. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among the Investors.

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IN WITNESS WHEREOF, the parties hereto have caused this Preferred Equity Purchase Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

COMPANY:

APPLIED DIGITAL CORPORATION

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

[Signature Page to Preferred Equity Purchase Agreement]

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[INVESTOR SIGNATURE PAGES TO PREFERRED EQUITY PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Preferred Equity Purchase Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

Name of Investor: \_\_\_\_\_

Signature of Authorized Signatory of Investor: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Email Address of Authorized Signatory: \_\_\_\_\_

Address for Notice to Investor: \_\_\_\_\_

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## Applied Digital Enters Into a \$150 Million Convertible Preferred Equity Facility to Advance Development of Ellendale Multi-Building HPC Campus

Draws on the Facility are at the Company's discretion; The Company will provide an update on a lease for the Company's *Ellendale High Performance Computing data center campus (the "Ellendale HPC Campus")* in the near term

**DALLAS – April 30, 2025 — Applied Digital Corporation (Nasdaq: APLD) ("Applied Digital" or the "Company")**, a designer, builder, and operator of next-generation digital infrastructure for HPC applications, announced today that the Company entered into a private financing arrangement with institutional investors (the "Investors"), pursuant to which the Company has the right, but not an obligation, to sell up to \$150 million of a newly created series of convertible preferred stock to the Investors.

The convertible preferred stock issuable under the equity facility (the "Facility") has a stated value and purchase price of \$1,000 per share, bears no preferred return or preferred dividends, and will be sold at an original issue discount of four percent. The Facility has a term of 36 months, over which the Company can draw up to \$150 million at its discretion, in increments of \$25 million, as long as certain conditions are met. Applied Digital retains full control over the timing and amount of any sales to the Investors, with no obligation to utilize any of the \$150 million available under the Facility. Draws cannot be initiated by the Investor, and there are no minimum commitments or penalties for non-use. The Company plans to use the proceeds from draws under the Facility to fund development of the Ellendale HPC Campus and for general corporate purposes.

The preferred stock is convertible into shares of the Company's common stock beginning on the earlier of 45 days after the first issuance of preferred stock or when a registration statement covering their resale is declared effective by the U.S. Securities and Exchange Commission, at an initial per share conversion price of the greater of 95% of the lowest daily VWAP for each of the five trading days immediately preceding the conversion date and \$4.25, subject to adjustment as set forth in the governing documents. Sales to the Investors under the Facility are subject to a beneficial ownership cap of 4.99% of the Company's outstanding common stock at any one time, and a 19.99% blocker provision to comply with NASDAQ Listing Rules, along with other restrictions and conditions outlined in the definitive documents. The preferred stock is subject to redemption by the Company, for cash, in lieu of conversion, upon the occurrence of certain events.

"We are pleased to announce this facility which will provide capital to further the development of our Ellendale HPC Campus," said Wes Cummins, Chief Executive Officer of Applied Digital. "This facility gives us flexibility to access capital that will be used to progress the build-out of our second data center while nearing completion on the construction on our first data center on that campus."

Northland Capital Markets acted as Sole Placement Agent to the Company. Lowenstein Sandler LLP acted as legal counsel to the Company. Ellenoff Grossman & Schole acted as legal counsel to the Investors.

The securities described above (including any securities issuable pursuant to the conversion provisions of the preferred stock) have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The Company has agreed to file one or more resale registration statements with the Securities and Exchange Commission for purposes of registering the resale of the shares of common stock issuable upon conversion of the preferred stock issued under the Facility.



### About Applied Digital

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

### Forward-Looking Statements

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

### Investor Relations Contacts

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

### Media Contact

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

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