

AGREEMENT AND PLAN OF MERGER

AMONG

MITTLEMAN BROTHERS, LLC

AND

CHRISTOPHER P. MITTLEMAN

AND

PHILIP C. MITTLEMAN

AND

EACH OF THE OTHER PERSONS LISTED IN SCHEDULE “A”

AND

AIMIA INC.

AND

MITTLEMAN BROTHERS, INC.

dated as of

May 21, 2020

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of May 21, 2020, is entered into among Mittleman Brothers, LLC, a New York limited liability company (the “**Company**”), Christopher P. Mittleman, an individual (“**Christopher**”), Philip C. Mittleman, an individual (“**Philip**” and together with Christopher, the “**Management Sellers**”), each of the other individuals listed in Schedule A (together with the Management Sellers, the “**Sellers**”), Mittleman Brothers, Inc., a Delaware corporation (“**Subco**”) and Aimia Inc., a corporation incorporated under the laws of Canada (the “**Parent**”, and together with the Company, Subco and the Sellers, the “**Parties**”).

RECITALS:

WHEREAS, the Company and/or its Subsidiaries act as investment adviser or general partner to various Funds and Separate Managed Accounts (as defined below).

WHEREAS, the Sellers own 100% of the membership interests of the Company.

WHEREAS, the Parent owns all of the issued and outstanding shares of Subco.

WHEREAS, certain of the Parties previously entered into a Purchase Agreement, dated as of April 29, 2020 (the “**Prior Agreement**”) pursuant to which Parent proposed to acquire all of the issued and outstanding Interests (as defined herein) from the Sellers, which Prior Agreement is being superseded in its entirety by this Agreement.

WHEREAS, pursuant to Section 7.10 of the Prior Agreement, the parties thereto agreed that they would amend the Prior Agreement to ensure that the transactions between the parties would reflect the Amended Closing Procedures (as defined in the Prior Agreement), which transaction structure included a merger of the Company into a wholly-owned subsidiary of the Parent with the wholly-owned subsidiary of the Parent being the surviving entity of the merger.

WHEREAS, the Parties have prepared this Agreement in order to effectuate the provisions of Section 7.10 of the Prior Agreement.

WHEREAS, at the Closing, upon the terms and subject to the conditions contained in this Agreement, the Parties hereby agree that the Company will merge with and into Subco at Closing and Subco shall survive the merger.

WHEREAS, all approvals of the board of managers and members of the Company and the board of directors of Subco to consummate the Merger (as defined herein) required under the New York Limited Liability Company Law, the DGCL (as defined herein) and the organizational documents of the applicable Parties have been obtained.

WHEREAS, the Parties intend that, for U.S. federal income tax purposes, the Merger (as defined herein) will qualify as a “reorganization” within the meaning of Section 368(a) of the Code (as defined herein), that each of Parent, Subco and the Company are “parties to a reorganization” within the meaning of Section 368(b) of the Code and that this Agreement shall constitute a “plan of reorganization” within the meaning of Treasury Regulation (as defined herein) Section 1.368-2(g).

WHEREAS, following the Closing, Parent will transfer all of the outstanding shares of the Surviving Entity (as defined herein) to certain Affiliates of Parent.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Definitions

The following terms have the meanings specified or referred to in this Section 1.1.

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity.

“Adviser Compliance Policies” has the meaning set forth in Section 4.22.

“Advisers Act” means the United States Investment Advisers Act of 1940, as amended, and all rules and regulations promulgated from time to time thereunder.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

“Agreement” has the meaning set forth in the preamble.

“Ancillary Agreements” means the Employment Agreements, the Escrow Agreement and a customary mutual release from liabilities between the Sellers and the Company (including a specific waiver signed by each of the Contractual Equity Interestholders regarding any remaining contractual rights and an assumption of any liability under Section 409A of the Code).

“Annual Financial Statements” means the unaudited, consolidated financial statements of the Company for the years ended December 31, 2019 and 2018, including a balance sheet of the Company as at the last day of such period, the statement of earnings and deficit and the statement of cash flow of the Company for the period then ended and the notes thereto.

“AUM” means, as of a given date, the aggregate amount of assets under management by the Company and its Subsidiaries as of such date, as determined in accordance with applicable Law and valuation methodologies utilized in the ordinary course of business consistent with past practice.

“AUM Test” means the average aggregate value of the AUM during any Measurement Period, calculated in the ordinary course and on the same basis used for the accrual and payment of any management fees thereon.

“Behavioral Information” means data collected from an IP address, web beacon, pixel gig, ad tag, cookie, local storage, software, or by any other means, or from a particular computer, Web

browser, mobile telephone, or other device or application, where such data is or may be used to identify or contact an individual or device or application, to predict or infer the preferences, interests, or other characteristics of the device or of a user of such device or application, or to target advertisements or other content to a device or application, or to a user of such device or application.

“Benefit Plan” has the meaning set forth in Section 4.24(a).

“Business” means the business of the Company and its Subsidiaries on the date hereof.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Toronto, Ontario or New York, New York are authorized or required by Law to be closed for business.

“CA\$” means the Canadian dollar.

“Cash Accounting” means the accounting standard also known as cash-basis accounting, applied consistently and in accordance with reasonable industry practice.

“Cash Consideration” means \$4,637,818, allocated to each Seller per Schedule A.

“Certificates of Merger” means the certificates of merger, filed with the Secretary of State of the State of New York and the Secretary of State of the State of Delaware at the Effective Time, effecting the Merger.

“CFTC” means the U.S. Commodity Futures Trading Commission.

“Clawback” has the meaning set forth in Section 2.8(i).

“Client” means (i) any Fund, (ii) any Fund Unitholder, (iii) any Separate Managed Account, or (iv) any other any Person that has an Investment Advisory Agreement with the Company or its Subsidiaries.

“Client Consent” means:

- (i) with respect to a Client (other than a Private Fund or a Registered Fund) that is party to an Investment Advisory Agreement requiring (by its terms and/or under applicable Laws) written or “express” consent to the deemed assignment of such Investment Advisory Agreement resulting from the transactions contemplated by this Agreement, that such Client has provided written consent to such deemed assignment of such Investment Advisory Agreement resulting from the transactions contemplated by this Agreement, and such consent has not been revoked in writing as of Closing;
- (ii) with respect to a Client (other than a Private Fund) that is a party to an Investment Advisory Agreement that does not prohibit (by its terms or under applicable Laws) the use of “negative consent” to the deemed assignment of such Investment Advisory Agreement, that such Client has been sent a written notification and consent letter as contemplated by Section 7.3 of this Agreement, and such Client

- (i) has consented in writing, or (ii) has not for a period of at least forty-five (45) days (or such other period specified in such Investment Advisory Agreement) following receipt of such letter (or otherwise prior to the Closing) communicated in writing to the Company or Parent objections (or otherwise affirmatively declined in writing to give its consent), to the deemed assignment of such Investment Advisory Agreement resulting from the transactions contemplated by this Agreement, and has not been revoked in writing as of the Closing;
- (iii) with respect to a Client that is a Private Fund (A) that approval has been obtained in the manner required by the partnership agreement or other governing document of such Private Fund, or (B) in the event the partnership agreement or other governing document of such Private Fund does not address such approval, that (1) the general partner or the board of directors, as applicable, of such Private Fund has provided written consent to the deemed assignment of the applicable Investment Advisory Agreement resulting from this Agreement and the transactions contemplated herein, and such consent has not been revoked in writing as of the Closing, and (2) for a period of at least forty-five (45) days following receipt of the written notification and consent letter as contemplated by Section 7.3 of this Agreement, a majority-in-interest of the investors of such Private Fund (determined by reference to their capital account balance or share ownership of such Private Fund, as applicable) have not communicated to the Company or its Subsidiaries objections to the general partner's granting of the consent described in clause (A).

provided, however, that with respect to any of the foregoing clauses (i)–(iii) above, any Client who following the Measurement Date but prior to the Closing has notified the Company or any of its Subsidiaries in writing of its intention to redeem (or otherwise has redeemed) 75% or more of its assets under management (measured and valued as of the Measurement Date), shall in any such case be deemed not to have provided a Client Consent for any purpose under this Agreement.

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” means (a) the day which is three (3) Business Days after the day on which the conditions set forth in Article IX and Article X have been satisfied or waived (other than conditions that cannot be satisfied other than at the Closing), or (b) such other date as the Parent and the Sellers' Representative shall mutually agree.

“Closing Debt” means the combined Debt of the Company and its Subsidiaries determined as of the Closing Date.

“Closing Debt Statement” has the meaning set forth in Section 2.8(a).

“Closing Statements” has the meaning set forth in Section 2.8(a).

“Closing Working Capital” means the combined working capital of the Company and its Subsidiaries determined as of the Closing Date, calculated by the Parties acting reasonably.

“Closing Working Capital Statement” has the meaning set forth in Section 2.8(a).

“Code” means the *Internal Revenue Code of 1986*, as amended, and shall be deemed to include interpretations of the Code under regulations or other authority issued with respect thereto or judicial interpretations thereof.

“Company” has the meaning set forth in the preamble.

“Company Indemnitees” has the meaning set forth in Section 11.4.

“Consideration Shares” means the Initial Share Consideration, the Escrow Shares and the Earn-Out Shares.

“Constituent Entities” has the meaning set forth in Section 2.1(a).

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“Contractual Equity Interestholders” means Evan R Newman, Jessica Clingo and Stephen G. Bondi.

“Contractual Equity Interestholders Percentage” means 6.0589%.

“Contractual Equity Interests” means any contractual agreement or undertaking by the Company and any Person to grant such Person any Interest in the Company.

“control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Debt” means all obligations and liabilities of the Company and its Subsidiaries in respect of (i) indebtedness for borrowed money including any related prepayment fees, early termination fees, penalties or expenses (including overdraft facilities and similar charges), all indebtedness represented by bonds, debentures, notes, or similar instruments, (ii) the deferred purchase price of property or services (including the maximum gross amount of any earn-out payments, “seller notes” payable with respect to the acquisition of any Person, business, assets or securities, amounts held back to satisfy potential liabilities in connection with any acquisition and, to the extent not paid from such holdback amounts, amounts owed in respect of post-closing price true-ups and indemnifications), including any negotiated amounts to make such payments, (iii) commitments to repay deposits or other amounts advanced by and owing to third Persons, to the extent, in the case of short-term deposits, (iv) indebtedness under any interest rate, currency swap, forward contract or other interest rate or currency protection or hedging agreement or other similar interest rate or currency agreement, reduced by the amount receivable upon the termination of such arrangements at the Closing; (v) indebtedness arising under capitalized leases, conditional sales contracts and other similar title retention instruments as determined in accordance with Cash Accounting, (vi) the employer portion of any payroll Taxes related to any amounts related to the transactions contemplated in this Agreement, plus the employer portion of

any payroll Taxes related to any ordinary course compensation and Contractual Equity Interests, (vii) any letter of credit or performance bond (to the extent drawn or where the conditions to draw-down have been satisfied) or any similar instruments (viii) any accrued compensation, bonuses or distributions payable and any amounts due to officers or employees employed by the Company or its Subsidiaries or otherwise owing by the Company or any of its Subsidiaries (for clarity, including transaction bonuses related to the completion of the transactions contemplated by this Agreement put in place by the Company or any of its Subsidiaries prior to the Closing) other than ordinary course compensation and the Contractual Equity Interests, (ix) any accrued and unpaid vacation time (other than in respect of the current year) due to officers or employees employed by a the Company or its Subsidiaries as of Closing or otherwise owing by the Company or any of its Subsidiaries, (x) any overdue payables outside normal credit terms, including, subject to the exclusion at the end of this definition, any amounts owing on credit cards, (xi) Transaction Expenses, (xii) accrued and unpaid Taxes for the Pre-Closing Tax Period, (xiii) deferred revenue amounts or reserves, (xiv) all obligations to pay any amounts relating to, or arising out of, any Action that the Company or a Subsidiary was or is, as of the date hereof, a party to where a litigation reserve has been created, and (xv) all indebtedness of others referred to in clauses (i) through (xiv) above guaranteed by, or secured by any Encumbrance upon any asset owned by, the Company or any Subsidiary provided however, that “Debt” shall not include any amounts that are included as current liabilities for purposes of the computation of Closing Working Capital. For avoidance of doubt and to provide further clarity, Debt shall be calculated reasonably and in accordance with past practice.

“Deposited Escrow Shares” means the Escrow Shares less the Excluded Escrow Shares.

“Deposited Forfeited Shares” means \$2,500,000 worth of Escrow Shares, calculated using the closing price of the Parent Shares on the TSX on the last trading day prior to the fourth (4th) year anniversary of the Closing Date, less the number of Forfeited Shares.

“Designated Matters” means the matters set forth in Section 1.1 of the Disclosure Schedules.

“DGCL” means the General Corporation Law of the State of Delaware.

“Direct Claim” has the meaning set forth in Section 11.5.

“Disclosure Schedules” means the Disclosure Schedules delivered by the Company concurrently with the execution and delivery of this Agreement.

“Disputed Amounts” has the meaning set forth in Section 2.8(b)(iv).

“Earn-Out Disputed Matters” has the meaning set forth in Section 2.8(g)(iii).

“Earn-Out Independent Accountant” has the meaning set forth in Section 2.8(g)(iii).

“Earn-Out Resolution Period” has the meaning set forth in Section 2.8(g)(ii).

“Earn-Out Review Period” has the meaning set forth in Section 2.8(g)(i).

“Earn-Out Shares” means 1,000,000 Parent Shares, issued by the Parent from treasury and allocated to each Seller per Schedule A, adjusted as necessary to give effect to any share splits,

share consolidations or other changes to the capitalization of the Parent occurring after the date hereof.

“Earn-Out Statement of Objections” has the meaning set forth in Section 2.8(g)(ii).

“Effective Time” means the time at which the Certificates of Merger have become fully effective with the Secretary of State for the State of Delaware and the Secretary of State for the State of New York, or such other time as the Parent and the Company may agree.

“Employment Agreement” means the employment agreement between each of the Management Sellers and the Company, to be entered into concurrently or prior to Closing, pursuant to which, such Management Sellers shall serve as the Chief Executive Officer (in the case of Philip) and Chief Investment Officer (in the case of Christopher) of the Parent, which agreements shall be in such form as is satisfactory to the Parent and shall include a customary non-competition clause.

“Employment Termination Event” means the termination of the Employment Agreement pursuant to an event contemplated in section 15.2 or section 15.4 therein.

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know

Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

“ERISA Affiliate” means each trade or business (whether or not incorporated) that would be treated together with the Company or any of its Subsidiaries as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Escrow Agent” means a commercial escrow agent to be mutually agreed on by the Parent and the Sellers’ Representative, each acting reasonably, prior to Closing.

“Escrow Agreement” means a customary escrow agreement among the Parent, the Escrow Agent and the Sellers’ Representative to be entered into concurrently with the Closing, with any fees payable therein to be paid by the Parent.

“Escrow Shares” means 1,666,667 Parent Shares, issuable by the Parent from treasury, adjusted as necessary to give effect to any share splits, share consolidations or other changes to the capitalization of the Parent occurring after the date hereof.

“Excluded Escrow Shares” means the product of the Escrow Shares and the Contractual Equity Interestholders Percentage, rounded to the nearest whole Parent Share.

“Fairness Opinion” means the opinion of the Financial Advisor addressed to the Parent to the effect that, as of the date of such opinion based on and subject to the assumptions, limitations and qualifications set forth therein, the transactions contemplated by this Agreement are fair, from a financial point of view, to the Parent.

“Final Debt” has the meaning set forth in Section 2.8(d).

“Final Performance Measure” has the meaning set forth in Section 2.8(g)(vi).

“Final Working Capital” has the meaning set forth in Section 2.8(c).

“Financial Advisor” means Industrial Alliance Securities Inc.

“Forfeited Shares” means the product of (i) \$2,500,000 worth of Escrow Shares, calculated using the closing price of the Parent Shares on the TSX on the last trading day prior to the fourth

(4th) year anniversary of the Closing Date; and (ii) the Contractual Equity Interestholders Percentage.

“Fraud” means, in respect of any Person and as determined by a court of competent jurisdiction, an act committed by such Person (or its Affiliates), that involves (i) a false representation of material fact made by such Person (or any of its Affiliates); (ii) with actual knowledge of such Person (or any of its Affiliates) that such representation is false; (iii) with an intention to induce the Person to whom such representation is made (or any of its Affiliates) to act or refrain from acting in reliance upon it; (iv) causing that Person (or any of its Affiliates), in justifiable reliance upon such false representation, to take or refrain from taking action; and (v) causing such Person (or any of its Affiliates) to suffer material damage as a result thereof.

“Fund” means any each pooled investment vehicle, including any vehicle that would be an “investment company” (as defined in the Investment Company Act) but for the exemption provided in Section 3(c) of the Investment Company Act, or other “investment company” (as defined in the Investment Company Act), whether registered under the Investment Company Act or unregistered, (i) established or sponsored by and (ii) advised or subadvised by, the Company or any of its Subsidiaries as of the date hereof, including without limitation Mittleman Brothers Master Fund, Ltd, Mittleman Brothers Fund, LP and Mittleman Brothers Offshore Fund, Ltd. and Precog Capital Partners, L.P.

“Fund Contracts” has the meaning set forth in Section 4.8.

“Fund Reports” has the meaning set forth in Section 4.22(p).

“Fund Unitholder” means, at a particular date, a Person that is a holder of any equity interest in a Fund at such date.

“Fundamental Representations” has the meaning set forth in Section 11.1.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Harmful Code” means is any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to maliciously undertake any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such

code is stored or installed; or (ii) damaging or destroying any data or file without the user's consent.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, per- and polyflouroalkyl substances, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Indemnified Party” has the meaning set forth in Section 11.5.

“Indemnifying Party” has the meaning set forth in Section 11.5.

“Independent Accountant” has the meaning set forth in Section 2.8(b)(iv).

“Initial Share Consideration” means 1,506,943 Parent Shares, issued by the Parent from treasury and allocated to each Seller per Schedule A.

“Insurance Policies” has the meaning set forth in Section 4.20.

“Intellectual Property” means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, re-examinations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (**“Patents”**); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (**“Trademarks”**); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (**“Copyrights”**); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media accounts and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (**“Trade Secrets”**); (h) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (**“Software”**); and (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

“Intellectual Property Agreements” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that is used or held for use in the conduct of the Business as currently conducted or proposed to be conducted to which a the Company or any of its Subsidiaries is a party, beneficiary or otherwise bound, and includes those Contracts set forth in Section 4.17(b) of the Disclosure Schedules.

“Intellectual Property Assets” means all Intellectual Property that is owned by the Company or any of its Subsidiaries and used or held for use in the conduct of the Business as currently conducted or proposed to be conducted, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to the Company or its Subsidiaries with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof/accruing on or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof, and includes the Intellectual Property set forth in Section 4.17(a) of the Disclosure Schedules.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

“Interests” means the ownership interests in the Company described as “Interests” in the LLC Agreement.

“Interim Financial Statements” means the unaudited financial statements of the Company for the three-month period ended March 31, 2020, including a balance sheet of the Company as at the last day of such period, the statement of earnings and deficit and the statement of cash flow of the Company for the period then ended.

“Investment Advisory Agreement” means each agreement and arrangement (including any side letter) for performing investment advisory or investment management services or sub-advisory services.

“Investment Company Act” means the United States Investment Company Act of 1940, as amended, and all rules and regulations promulgated from time to time thereunder.

“IT Systems” means the computer, information technology, and data processing systems, facilities and services used and controlled by the Company or any of its Subsidiaries in the conduct of the Business, including all software, systems hardware, networks, interfaces, platforms and related systems and services.

“Key Investment Advisory Agreements” has the meaning set forth in Section 4.7(a).

“Knowledge of the Company” or “Company’s Knowledge” or any other similar knowledge qualification, means the actual or constructive knowledge of the Management Sellers and Stephen Bondi, in each case after as of the date hereof.

“Known Appointments” means Philip C. Mittleman’s appointment to PLM’s board of directors and Big Life’s board of directors.

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

“Leased Real Property” has the meaning set forth in Section 4.16(a).

“Leases” has the meaning set forth in Section 4.16(a).

“Letter Agreement” means that certain letter agreement, dated as of December 31, 2019, from the Company to David J. Mittleman with the reference line of “Voting Agreement.”

“Liabilities” means debts, liabilities, obligations, damages, penalties, costs, expenses or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“LLC Agreement” means the operating agreement of the Company immediately prior to Closing.

“Locked-Up Shares” has the meaning set forth in Section 2.7(a).

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs, expenses or Taxes (excluding, for greater certainty, any reduction in Tax attributes arising in a Pre-Closing Tax Period) of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“made available” means provided by electronic means to the Parent or the Parent’s legal counsel prior to the close of business on May 12, 2020.

“Management Sellers” has the meaning set forth in the preamble.

“Material Adverse Effect” means any fact, development, change, effect, event or condition that, individually or in the aggregate, would reasonably be expected to have a materially adverse effect on the business, operations, results of operations or financial condition of the Company and its Subsidiaries taken as a whole, except that none of the following, either alone or in combination, shall be considered in determining whether there has been a “Material Adverse Effect” or a breach of a representation, warranty, covenant or agreement that is qualified by the term “Material Adverse Effect”: (a) changes, effects, events or conditions in worldwide, national or local conditions or circumstances (political, economic, financial, public health, regulatory or otherwise, including changes in the credit, interest rate, currency markets and pandemics); (b) any change generally affecting the industry in which the Company operates; and (c) an outbreak or escalation of war (whether or not declared), armed hostilities, acts of terrorism, political instability or other national calamity, crisis or emergency (including pandemics), or any governmental response to any of the foregoing, in each case, whether occurring within or outside of the United States; provided, that the exceptions set forth in clauses (a), (b) and (c) shall only

apply to the extent that such change, effect, event or condition does not have or cause a materially disproportionate effect on the Company and its Subsidiaries, taken as a whole, compared to other companies operating in the same industry as the Company.

“Material Contracts” has the meaning set forth in Section 4.13(a).

“Measurement Date” means March 31, 2020.

“Measurement Date AUM” means the AUM on the Measurement Date, which the Parties agree was \$ 173,092,431.31.

“Measurement Period” means any two (2) consecutive full calendar quarters, that are completed at any time after the Closing Date and prior to the fourth (4th) annual anniversary of the Closing Date.

“Merger” has the meaning set forth in Section 2.1(a).

“Merger Laws” has the meaning set forth in Section 2.1(a).

“Mittleman Opco” means Mittleman Investment Management, LLC.

“Money Laundering Laws” has the meaning set forth in Section 4.31.

“Multiemployer Plan” has the meaning set forth in Section 4.24(c).

“New Client” means any Person who becomes a Client after the date hereof, but prior to the Closing.

“NFA” means the U.S. National Futures Association.

“OFAC” has the meaning set forth in Section 4.32.

“Outside Date” means June 30, 2020.

“Parent Indemnitees” has the meaning set forth in Section 11.2.

“Parent Shares” means the common shares of the Parent.

“Parties” has the meaning set forth in the preamble.

“Performance Measures” means the AUM Test and the Share Price Test.

“Performance Statement” has the meaning set forth in Section 2.8(g).

“Performance Threshold” means (i) with respect to the AUM Test, \$300 million, provided that any AUM during the Measurement Period that bears an annual management fee of less than 1% (x) shall not be included in the calculation; and (y) the product of such AUM and the quotient of the average annual management fee payable on such AUM and 1%, shall be included in the calculation; and (ii) with respect to the Share Price Test, CA\$6.

“Permits” means any order, permit, certificate, accreditation, non-objection (including a lapse, without objection, of a prescribed time period under applicable Laws), approval, consent, waiver, registration, licence, membership, or similar authorization of any Governmental Authority having jurisdiction over the Person.

“Permitted Encumbrances” has the meaning set forth in Section 4.14(a).

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Personal Information” means information and data concerning an identified or identifiable natural Person, including, without limitation, any information specifically defined or identified in any Company privacy policy as “Personal Information,” “Personally identifiable information,” or “PII,” all information, including any such information relating to any individual, including a current, prospective or former customer, employee or vendor of any Person. Personal Information includes information in any form, including paper, electronic and other forms or mediums.

“Post-Closing Adjustments” means the Post-Closing Debt Adjustment and the Post-Closing Working Capital Adjustment.

“Post-Closing Debt Adjustment” means the amount determined when Target Debt is subtracted from Final Debt.

“Post-Closing Working Capital Adjustment” means the amount determined when Target Working Capital is subtracted from Final Working Capital.

“Pre-Closing Tax Period” has the meaning set forth in Section 11.2(b).

“Prior Agreement” has the meaning set forth in the recitals.

“Privacy Laws and Requirements” has the meaning set forth in Section 4.30.

“Private Fund” means a Fund that is not registered under the Investment Company Act.

“Private Information” has the meaning set forth in Section 4.30.

“Qualified Benefit Plan” has the meaning set forth in Section 4.24(c).

“Real Property” means any parcel of real property legally or beneficially owned, used or occupied by the Company or any of its Subsidiaries used in connection with the Business (together with all buildings, fixtures, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto).

“Registered Fund” means a Fund that is registered under the Investment Company Act.

“Regulatory Approvals” has the meaning set forth in Section 4.4(b).

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Resolution Period” has the meaning set forth in Section 2.8(b)(iii).

“Review Period” has the meaning set forth in Section 2.8(b)(i).

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

“Security Incident” means (a) the loss or misuse of personal data or third party confidential information, (b) the accidental, unauthorized and/or unlawful access or handling of personal data or third party confidential information, or (c) any other act or omission that compromises the security, confidentiality and/or integrity of personal data or third party confidential information. Security Incidents include, among other things, the loss of paper files and portable devices, such as laptops and CDs, containing personal data or third party confidential information.

“Sellers” has the meaning set forth in the preamble and for avoidance of doubt, shall include the Contractual Equity Interestholders.

“Sellers’ Representative” means Philip Mittleman.

“Sellers’ Representative Indemnified Parties” has the meaning set forth in Section 12.3.

“Separate Managed Account” means each client account (other than a Fund) for which the Company or any of its Subsidiaries provides investment advisory services.

“Share Price Test” means the highest VWAP of the Parent Shares on the TSX for any 20 consecutive trading day period.

“Statement of Objections” has the meaning set forth in Section 2.8(b)(iii).

“Straddle Period” means any taxable period that includes, but does not end on, the date hereof.

“Subsidiary” means a Person that is controlled, directly or indirectly, by the Company, and includes a Subsidiary of that Subsidiary and shall include, as of the date hereof, Master Control LLC, Mittleman Brothers Fund GP, LLC and Mittleman Opco. For the avoidance of doubt, no Fund shall be deemed a Subsidiary.

“Surviving Entity” has the meaning set forth in Section 2.1(b).

“Target Debt” means \$0.

“Target Working Capital” means the sum of (1) \$100,000; and (2) the balance of the remaining budget for the period, calculated in accordance with past practice.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, value added, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, social security, Medicare, withholding, payroll, employment, unemployment, disability, estimated, alternative minimums, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Third Party Claim” has the meaning set forth in Section 11.5(a).

“Total Consideration” means the Cash Consideration, the Initial Share Consideration, the Escrow Shares and the Earn-Out Shares.

“Transaction Expenses” means any amounts paid or payable by the Company or any of its Subsidiaries on account of any fees or expenses incurred by the Company or any of its Subsidiaries in connection with the negotiation or consummation of the transactions contemplated hereby.

“Transfer Taxes” means any sales, use, value added, transfer, stamp, stock transfer, documentary, recording and other similar tax, fee or charge imposed by a Governmental Authority.

“TSX” means the Toronto Stock Exchange.

“TSX Approval” means the conditional approval by the TSX to admit for trading the Consideration Shares.

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

“U.S. Securities Act” means the Securities Act of 1933, as amended, of the United States, and the rules and regulations promulgated from time to time thereunder.

“U.S. Securities Laws” means the U.S. Exchange Act, the U.S. Securities Act, the Advisers Act and such other similar Laws governing the same subject matter.

“Undisputed Amounts” has the meaning set forth in Section 2.8(b)(iv).

“Union” has the meaning set forth in Section 4.25(b).

“VWAP” means the volume weighted average price, calculated in accordance with the TSX Company Manual.

1.2 Certain Rules of Interpretation.

Unless otherwise expressly provided, the following rules of interpretation shall apply:

- (a) the table of contents and headings set forth in this Agreement are for convenience of reference purposes only and shall not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof;
- (b) unless otherwise indicated, all references herein to Sections, Articles or Exhibits, shall be deemed to refer to Sections, Articles or Exhibits of or to this Agreement, as applicable;
- (c) the use in this Agreement of the masculine pronoun in reference to an individual shall be deemed to include the feminine or neuter, and vice versa, as the context may require;
- (d) any reference to the singular in this Agreement shall also include the plural and vice versa, as the context may require;
- (e) any reference to a statute shall mean the statute in force as at the date of this Agreement (together with all regulations promulgated thereunder) as the same may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and, where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end; and
- (g) the words “include”, “includes” and “including” mean “include”, “includes” and “including”, in each case, “without limitation”.

1.3 Currency

Except where otherwise expressly provided, all dollar amounts in this Agreement are stated and shall be paid in United States currency.

ARTICLE II TRANSACTION

2.1 Merger Events

- (a) Upon the terms and subject to the conditions set forth in this Agreement, Parent, Subco and the Company (Subco and the Company sometimes being referred to herein as the “**Constituent Entities**”) will file the Certificates of Merger, which will cause the Company to be merged with and into Subco with Subco being the surviving entity and the separate existence of the Company will cease (the

“Merger”). The Merger will be consummated (i) in accordance with the terms and subject to the conditions in this Agreement and Section 904 of the New York Business Corporation Law, Sections 1001, 1002, 1003 and 1004 of the New York Limited Liability Company Law, Section 264 of the DGGL and any other sections of the New York Business Corporation Law, the New York Limited Liability Company Law and the DGCL referenced within any of the foregoing sections (collectively, the **“Merger Laws”**) and (ii) as of the Effective Time.

- (b) Upon consummation of the Merger, the separate existence of the Company will cease and Subco, as the surviving entity of the Merger (hereinafter referred to for the periods at and after the Effective Time as the **“Surviving Entity”**), will continue its existence as a wholly-owned direct subsidiary of Parent. The Merger will have the effects set forth in this Agreement and in the applicable provisions of the Merger Laws.
- (c) [Reserved]
- (d) Prior to the Effective Time, Parent will transfer to Subco the Cash Consideration, subject to adjustment and payable in accordance with the terms of this Agreement, and agrees to issue the Consideration Shares to Sellers in exchange for 999 common shares of Subco.
- (e) The Parties acknowledge and agree that after the Effective Time, Parent will transfer all of the outstanding shares of the Surviving Entity to certain Affiliates of Parent.

2.2 Effects of the Merger

At and after the Effective Time: (a) the Surviving Entity will thereupon and thereafter possess all of the rights, privileges and powers of the Constituent Entities; (b) all rights, privileges and powers of each Constituent Entity, and all property, real, personal and mixed, and all debts due to each such Constituent Entity, on whatever account, and all causes of action belonging to each such company, will become vested in the Surviving Entity; (c) all property, rights, privileges, powers and franchises, and all and every other interest will become thereafter the property of the Surviving Entity as they are of the Constituent Entities; and (d) the title to any real property vested by deed or otherwise or any other interest in real estate vested by any instrument or otherwise in either of such Constituent Entities will not revert or become in any way impaired by reason of the Merger; but all Encumbrances upon any property of either Constituent Entity will be preserved unimpaired and will thereafter attach to the Surviving Entity and will be enforceable against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; all of the foregoing in accordance with the applicable provisions of the Merger Laws.

2.3 Certificate of Incorporation and By-laws; Officers and Directors.

- (a) As of the Effective Time, the certificate of incorporation of Subco, as amended by the Certificates of Merger, will be the certificate of incorporation of the Surviving Entity (the “**Certificate of Incorporation**”) until thereafter changed or amended as provided therein or by applicable Law.
- (b) The by-laws of Subco will be the by-laws of the Surviving Entity after the Effective Time until thereafter changed or amended as provided therein or by applicable Law.
- (c) The directors of the Surviving Entity after the Effective Time will be Christopher P. Mittleman, Philip C. Mittleman and Steven Leonard and the officers of the Surviving Entity after the Effective Time will be Christopher P. Mittleman (Chief Investment Officer), Philip C. Mittleman (Chief Executive Officer), Evan R. Newman (President & Director of Business Development), Stephen G. Bondi (Treasurer, Chief Financial Officer & Chief Compliance Officer), and Jessica Clingo (Director of Administration & Operations & Secretary), each to hold office in accordance with the by-laws of the Surviving Entity and the DGCL, provided that nothing herein shall constitute an undertaking or guarantee that such individuals shall continue to hold office for any specific period of time thereafter.

2.4 Effect on Company Interests and Contractual Equity Interests

- (a) As of the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent or Subco, or any holder of the equity capital of the Company, Parent or Subco, all Interests issued and outstanding, in each case immediately prior to the Effective Time, will be canceled and extinguished, and will be converted automatically into the right by such Seller to receive such Seller’s portion of the Total Consideration, as set forth on Schedule A, subject to *pro rata* adjustment as provided elsewhere in this Agreement. Immediately after the Effective Time, the Interests will cease to exist and the relevant Seller will cease to have any rights with respect to such Interests, except for the right to receive such Seller’s portion of the Total Consideration, as set forth on Schedule A, subject to *pro rata* adjustment as provided elsewhere in this Agreement, without interest.
- (b) As of the Effective Time, each Seller that is a Contractual Equity Interests holder agrees to forever waive, discharge and/or forfeit any and all Contractual Equity Interests held by such Seller in consideration for the right by such Seller to receive such Seller’s portion of the Total Consideration, as set forth on Schedule A, subject to *pro rata* adjustment as provided elsewhere in this Agreement. Immediately after the Effective Time, the Contractual Equity Interests will cease to exist and each Seller that is Contractual Equity Interests holder will cease to have any rights with respect to such Contractual Equity Interests, except for the right to receive such Seller’s portion of the Total Consideration, as set forth on Schedule A, subject to *pro rata* adjustment as provided elsewhere in this Agreement.

2.5 Merger Consideration

The aggregate consideration payable by Parent and Subco for the consummation of the Merger and the other transactions described in this Article II will be equal to the Total Consideration, subject to adjustment and payable in accordance with the terms of this Agreement.

2.6 U.S. Tax Treatment of Merger

- (a) For U.S. federal income tax purposes, this Agreement is intended to constitute, and the Parties hereby adopt this Agreement as, a “plan of reorganization” within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). Each Party agrees that, for U.S. federal income tax purposes, (a) it shall treat the Merger as a tax-free reorganization within the meaning of Section 368(a) of the Code; (b) that it shall report the Merger as a “reorganization” within the meaning of Section 368(a) of the Code and it shall not take any tax reporting position inconsistent with such treatment for U.S. federal, state and other relevant tax purposes; (c) the Company, Parent and Subco are “parties to a reorganization” within the meaning of Section 368(b) of the Code; (d) it shall retain such records and file such information as is required to be retained and filed pursuant to U.S. Internal Revenue Service Treasury Regulation Section 1.368(a)-3 in connection with the Merger; and (e) it shall otherwise use its best efforts to cause the Merger to qualify as a “reorganization” within the meaning of Section 368(a) of the Code.
- (b) Any payments provided for under this Article II that are in the nature of compensation are intended to be exempt from or compliant with Section 409A of the Code, and this Agreement will be interpreted in accordance with this intent. Except as otherwise permitted under Section 409A of the Code, no payments otherwise provided for under this Article II that are in the nature of compensation will be paid later than five years after the Closing Date. Notwithstanding any other provision of this Agreement, the Parent, Subco and their Affiliates will not be liable to Sellers or any Person claiming through Sellers for any adverse tax consequences under Code Section 409A relating to the Contractual Equity Interests granted prior to the Effective Time.

2.7 Lockup

- (a) Each Management Seller hereby agrees that, during the period beginning on the Closing Date and ending on the day that is the fifth (5th) annual anniversary following the Closing Date, the Management Seller will not, directly or indirectly, including without limitation through any entity or person controlled by the Management Seller, without the prior written consent of the Parent:
 - (i) offer, sell, contract to sell, secure, pledge, grant or sell any option, right or warrant to purchase, or otherwise lend, transfer or dispose of any Parent Shares received pursuant to this Agreement (the “**Locked-Up Shares**”), or make any short sale, engage in any hedging transaction, or enter into any swap or other arrangement (including through any other derivatives or investment funds) that transfers to another, in whole or in part, any of the economic consequences of ownership of the Locked-Up Shares, whether

any such transaction is to be settled by delivery of the Locked-Up Shares, other securities, cash or otherwise; or

- (ii) agree to or announce any intention to do any of the foregoing things.
- (b) Section 2.7(a) shall not apply in the event of (A) a tender to a bona fide third-party take-over bid made to all holders of voting securities of the Parent in accordance with applicable Law or similar acquisition or merger, provided that in the event that the take-over bid, acquisition or merger is not completed, the Locked-Up Shares shall remain subject to the restrictions contained in Section 2.7(a); and (B) a transfer of the Locked-Up Shares to an Affiliate for Tax or estate planning purposes, but only if such Affiliate agrees to be bound by the restrictions in Section 2.7(a) as if such Affiliate was the Management Seller.

2.8 Post-Closing Adjustment

- (a) **Post-Closing Adjustment.** Within thirty (30) days after the Closing Date, the Sellers' Representative shall prepare and deliver to the Parent (A) a statement setting forth its calculation of Closing Working Capital and the Post-Closing Working Capital Adjustment (the "**Closing Working Capital Statement**"), (B) a statement setting forth its calculation of Closing Debt and the Post-Closing Debt Adjustment (the "**Closing Debt Statement**" and together with the Closing Working Capital Statement, the "**Closing Statements**") and (C) a certificate of a Person that was an officer of the Company on the date hereof that the Closing Statements were prepared in accordance with past practice (in the case of the Closing Working Capital Statement) and Cash Accounting applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements (in the case of the Closing Debt Statement).
- (b) **Examination and Review.**
 - (i) **Examination.** After receipt of the Closing Working Capital Statement, the Parent shall have forty-five (45) days (the "**Review Period**") to review the Closing Statements.
 - (ii) **Cooperation.** Upon reasonable request, at any time after the delivery of the Closing Statements, the Parent shall request that the Company's auditors provide to the Sellers' Representative and its auditors reasonable access upon reasonable notice during normal working hours to all work papers of the Company's auditors, accounting books and records and supporting schedules, to the extent that they relate to the Closing Statements and reasonable access to the appropriate personnel to verify the

accuracy, presentation and other matters relating to the preparation of the Closing Statements (subject to reasonable confidentiality restrictions and to providing such assurances, releases, indemnities or other agreements as accountants may customarily require in such circumstances).

- (iii) **Objection.** On or prior to the last day of the Review Period, the Parent may object to the Closing Statements by delivering to the Sellers' Representative a written statement setting forth the Parent's objections in reasonable detail, indicating each disputed item or amount and the basis for the Parent's disagreement therewith (the "**Statement of Objections**"). If the Parent fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statements and the Post-Closing Adjustments, as the case may be, reflected in the Closing Statements shall be deemed to have been accepted by the Parent. If the Parent delivers the Statement of Objections before the expiration of the Review Period, the Parent and the Sellers' Representative shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustments and the Closing Statements, with such changes as may have been previously agreed in writing by the Parent and the Sellers' Representative, shall be final and binding.
- (iv) **Resolution of Disputes.** If the Parent and the Sellers' Representative fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**") and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of an impartial firm of independent certified public accountants independent of the Parties and mutually agreed to by the Parent and the Sellers' Representative, each acting reasonably (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustments, as the case may be, and the Closing Statements. The Parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the Parent and the Company and its decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statements and the Statement of Objections, respectively.
- (v) **Fees of the Independent Accountant.** The fees and expenses of the Independent Accountant shall be paid by the Sellers' Representative (on behalf of the Sellers), on the one hand, and the Parent, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Sellers or the Parent, respectively, bears to the aggregate amount actually contested by the Sellers and the Parent.

- (vi) **Determination by Independent Accountant.** The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the Parent and the Sellers' Representative shall agree in writing) after their engagement, and its resolution of the Disputed Amounts and adjustments to the Closing Statements and/or the Post-Closing Adjustments shall be conclusive and binding upon the Parties hereto.
- (c) **Final Working Capital.** The final, binding and conclusive calculation of Closing Working Capital based upon the agreement or deemed agreement of the Parent and the Sellers' Representative in accordance with Section 2.8(b)(iii), or the written determination delivered by the Independent Accountant pursuant to Section 2.8(b)(iv) shall be the "**Final Working Capital**" for purposes of this Agreement.
- (d) **Final Debt.** The final, binding and conclusive calculation of Closing Debt based upon the agreement or deemed agreement of the Parent and the Sellers' Representative in accordance with Section 2.8(b)(iii), or the written determination delivered by the Independent Accountant pursuant to Section 2.8(b)(iv) shall be the "**Final Debt**" for purposes of this Agreement.
- (e) **Post-Closing Adjustment Entitlements.**
 - (i) The positive amount, if any, of the Post-Closing Working Capital Adjustment shall be deemed to be owing from the Parent to the Sellers.
 - (ii) The negative amount, if any, of the Post-Closing Working Capital Adjustment shall be deemed to be owing from the Sellers to the Parent.
 - (iii) The positive amount, if any, of the Post-Closing Debt Adjustment shall be deemed to be owing from the Sellers to the Parent.
 - (iv) The negative amount, if any, of the Post-Closing Debt Adjustment shall be deemed to be owing from the Parent to the Sellers.
- (f) Within five (5) Business Days of the latest to be determined of the Post-Closing Working Capital Adjustment and Post-Closing Debt Adjustment:
 - (i) if a net amount is deemed to be owing to the Parent in respect of such Post-Closing Working Capital Adjustment and Post-Closing Debt Adjustment, the Seller Representative, on behalf of the Sellers, shall promptly issue a wire transfer of readily available funds to the Parent in an amount equal to the amount owing; and

- (ii) if a net amount is deemed to be owing to the Sellers in respect of such Post-Closing Working Capital Adjustment and Post-Closing Debt Adjustment, the Parent shall pay to the Sellers' Representative, to be subsequently transferred to the Sellers, by wire transfer of immediately available funds to an account designated in writing by the Sellers' Representative an amount equal to such amount.
- (g) **Earn Out.** Within thirty (30) days of the last day of any Measurement Period, the Sellers' Representative, with the full assistance of the Surviving Entity and the Parent, may prepare and deliver to the Parent a statement (the "**Performance Statement**") setting forth its calculation of the Performance Measures as at the end of the Measurement Period that elapsed.
 - (i) After receipt of the Performance Statement, the Parent shall have ten (10) days (the "**Earn-Out Review Period**") to review the Performance Statement.
 - (ii) On or prior to the last day of the Earn-Out Review Period, the Parent may object to the Performance Statement by delivering to the Sellers' Representative a written statement setting forth the Parent's objections in reasonable detail, indicating each disputed item or amount and the basis for the Parent's disagreement therewith (the "**Earn-Out Statement of Objections**"). If the Parent fails to deliver the Earn-Out Statement of Objections before the expiration of the Earn-Out Review Period, the Performance Statement shall be deemed to have been accepted by the Parent. If the Parent delivers the Earn-Out Statement of Objections before the expiration of the Earn-Out Review Period, the Sellers' Representative and the Parent shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Earn-Out Statement of Objections (the "**Earn-Out Resolution Period**"), and, if the same are so resolved within the Earn-Out Resolution Period, the Performance Statement, with such changes as may have been previously agreed in writing by the Parent and the Sellers' Representative, shall be final and binding. Items in the Performance Statement not objected to in the Earn-Out Statement of Objections will also be deemed accepted.
 - (iii) If the Sellers' Representative and the Parent fail to reach an agreement with respect to all of the matters set forth in the Earn-Out Statement of Objections before expiration of the Earn-Out Resolution Period, then any matters remaining in dispute ("**Earn-Out Disputed Matters**") shall be submitted for resolution to the office of an impartial firm of independent certified public accountants independent of the Parties and mutually agreed to by the Parent and the Sellers' Representative, each acting reasonably (the "**Earn-Out Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Earn-Out Disputed Matters only and make any adjustments to the Performance Statement.

- (iv) The fees and expenses of the Independent Accountant shall be paid in full by either the Sellers' Representative, in case the Earn-Out Independent Accountant disagrees with the Performance Statement delivered, or by the Parent, in case the Earn-Out Independent Accountant agrees with the Performance Statement delivered.
- (v) The Independent Accountant shall make a written determination with reasoning as soon as practicable within thirty (30) days (or such other time as the Sellers' Representative and the Parent shall agree in writing) after their engagement, and its resolution of the Earn-Out Disputed Matters and adjustments to the Performance Statement shall be conclusive and binding.
- (vi) The final binding and conclusive calculation of the Performance Measures as at the end of the relevant Measurement Period based upon the agreement or deemed agreement of the Sellers' Representative and the Parent in accordance with this Section 2.8(g), or the written determination delivered by the Independent Accountant pursuant to Section 2.8(g)(iii) shall be the "**Final Performance Measure**" for such Measurement Period the purposes of this Agreement.
- (vii) If the Final Performance Measure meets or exceeds the criteria of either of the Performance Thresholds, the Parent shall issue to the Sellers, within ten (10) Business Days of the determination of the Final Performance Measure, the Earn-Out Shares, using the allocations specified in Schedule A, provided that each Management Seller shall only be entitled to their respective allocation of the Earn-Out Shares if no Employment Termination Event occurred with respect to such Management Seller on or prior to the date the Earn-Out Shares are issued pursuant to this Section 2.8(g)(vii).
- (h) **Escrow Shares.** If the Final Performance Measure meets or exceeds the criteria of either of the Performance Thresholds, the Parent and the Sellers' Representative shall deliver, within five (5) Business Days of the determination of the Final Performance Measure, to the Escrow Agent, a joint direction directing the Escrow Agent to release the Deposited Escrow Shares to the Sellers (other than the Contractual Equity Interestholders), and the Parent shall issue the Excluded Escrow Shares to the Contractual Equity Interestholders, in each case using the allocation specified in Schedule A. In the event that neither of the Performance Thresholds are met or exceeded within four (4) years from the Closing Date, within five (5) Business Days of such date, the Sellers' Representative and the Parent shall deliver to the Escrow Agent a joint direction, directing the Escrow Agent to release the Deposited Escrow Shares, less the Deposited Forfeited Shares, to the Sellers (other than the Contractual Equity Interestholders), and the Parent shall issue the Excluded Escrow Shares, less the Forfeited Shares, to the Contractual Equity Interestholders, in each case using the allocation specified in Schedule A, adjusted on a *pro rata* basis to account for the reduction, with the remainder of the Deposited Escrow Shares to be released to the Company. The Company shall immediately cancel any Deposited Escrow

Shares it receives. Notwithstanding anything else in this Section 2.8(h), each Management Seller shall only be entitled to the full amount of their respective portion of the Deposited Escrow Shares released pursuant to this Section 2.8(h) if no Employment Termination Event has occurred with respect to such Management Seller on or prior to the date that the Deposited Escrow Shares are so earned. If an Employment Termination Event has so occurred, then the Management Seller to whom the Employment Termination Event relates shall only be entitled to the portion of the Deposited Escrow Shares attributable to him that is remaining after giving effect to the Clawback (as defined below) described in Section 2.8(i).

- (i) **Clawback.** Notwithstanding any other provisions of this Agreement or any Ancillary Agreement, unless otherwise agreed to by the Parent in writing, in the event that an Employment Termination Event with respect to a Management Seller occurs prior to the tenth (10th) anniversary of the Closing Date, such Management Seller shall, within ten (10) Business Days of the occurrence of the Employment Termination Event, transfer to the Parent fifty percent (50%) of the Total Consideration received by such Management Seller pursuant to the terms of this Agreement, which shall be transferred only from the Deposited Escrow Shares attributable to such Management Seller (the “**Clawback**”). If the value of the Deposited Escrow Shares attributable to such Management Seller is not equivalent to fifty percent (50%) of the Total Consideration received by such Management Seller, then the amount of the Clawback shall be adjusted to be equal to the value of such Deposited Escrow Shares attributable to such Management Seller. In the event that any Parent Shares that are subject to the Clawback were sold prior to their transfer to the Parent pursuant to this Section 2.8(i), the consideration received by the Management Seller pursuant to such sale shall be used for the calculation of the amount payable to the Parent by the Management Seller under this Section 2.8(i). For the avoidance of doubt, the sole recourse for the Clawback shall be the Deposited Escrow Shares attributable to such Management Seller and no recourse is available to the rest of the Total Consideration attributable to such Management Seller.
- (j) **Adjustments for Tax Purposes.** Any payments made pursuant to Section 2.88 shall be treated as an adjustment to the Total Consideration by the Parties for Tax purposes, unless otherwise required by Law.

2.9 Right to Withhold.

Parent and Subco shall each be entitled to deduct and withhold from any amounts otherwise deliverable or payable under this Agreement solely as may be required to be deducted or withheld with respect to the making of such payment under any applicable Law. To the extent that any amounts are so deducted or withheld and paid over to the appropriate Governmental Authority, the deducted or withheld amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which such deduction or withholding was required. Subject to applicable Law, the Parties agree to use best efforts in connection with the Closing to avoid such withholdings to the extent commercially reasonable.

ARTICLE III CLOSING

3.1 Closing

- (a) Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place remotely via the electronic exchange of documents and signatures in “pdf” format on the Closing Date. The Closing will become effective at the Effective Time; provided, that, notwithstanding the Effective Time set forth in the Certificates of Merger or the time the Closing occurs on the Closing Date, for tax and accounting purposes relating to business operations, the Closing shall be deemed to have occurred at 12:01 a.m. (prevailing Eastern Time) on the Closing Date. All proceedings to be taken and all documents to be executed and delivered by the Parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.
- (b) At the Closing:
 - (i) the Parent, Subco and the Company will cause the Certificates of Merger to be filed with the Secretary of State for the State of New York and the Secretary of State for the State of Delaware, as applicable;
 - (ii) Subco, or Parent as directed by Subco will deliver to the Sellers’ Representative:
 - (A) by wire transfer of immediately available funds an amount equal to the Cash Consideration; and
 - (B) such document customarily issued to evidence the issuance of the Initial Share Consideration;
 - (iii) the Parent and Subco will deliver to the Sellers’ Representative:
 - (A) each Ancillary Agreement to which the Parent is a party, duly executed by the Parent;
 - (B) a certificate of a senior officer of the Parent and Subco certifying that attached thereto are true and complete copies of all resolutions and other consents adopted by the Parent and Subco authorizing the execution, delivery, filing and performance of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions and consents are in full force and effect and are all the resolutions and consents adopted in connection with the transactions contemplated hereby and thereby;

- (C) the certificate of a senior officer of the Parent and Subco noted in Section 10.7; and
 - (D) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Sellers' Representative, as may be required to give effect to this Agreement;
- (iv) the Parent will deliver to the Escrow Agent:
- (A) the Escrow Agreement, duly executed by the Parent; and
- (v) Subco, or Parent as directed by Subco will deliver to the Escrow Agent:
- (A) such share certificates or other documents representing the Deposited Escrow Shares;
- (vi) the Sellers' Representative will deliver to the Parent:
- (A) each Ancillary Agreement to which any Seller is a party, duly executed by all Sellers that are parties to the applicable Ancillary Agreement;
 - (B) a duly executed certificate of non-foreign status from each Seller in the form and substance satisfactory to Parent and consistent with the provisions of Treasury Regulation Section 1.1445-2(b)(2)(iv) and a duly completed and executed IRS Form W-9 from each Seller establishing that such Seller is exempt from U.S. back-up withholding;
 - (C) the certificate noted in Section 9.10; and
 - (D) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Parent, as may be required to give effect to this Agreement;
- (vii) the Sellers' Representative will deliver to the Escrow Agent:
- (A) the Escrow Agreement, duly executed by the Sellers' Representative;
- (viii) the Company will deliver to the Parent:
- (A) each Ancillary Agreement to which the Company is a party, duly executed by the Company;
 - (B) copies of all consents and approvals of, filings with and notices and applications to any Governmental Authority and other Persons, if any, listed in Section 4.4 of the Disclosure Schedules (or in lieu

thereof waivers), and copies of all Client Consents received, each of which shall have not been revoked in writing (or, with respect to any Client Consent received through the so-called “negative consent” process, for which no affirmative written objection shall have been received);

- (C) a certificate of senior officer of the Company certifying that attached thereto are true and complete copies of all resolutions and other consents adopted by the board of managers of the Company and the Sellers authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements, and the consummation of the transactions contemplated hereby and thereby, and all such resolutions and consents are in full force and effect and are all the resolutions and consents adopted in connection with the transactions contemplated hereby and thereby;
- (D) the certificate of a senior officer of the Company noted in Section 9.9;
- (E) a good standing certificate of the Company and each of its Subsidiaries issued by the applicable Governmental Authority in such entity’s jurisdiction of formation; and
- (F) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Parent, as may be required to give effect to this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SELLERS

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, the Management Sellers and the Company, jointly and severally, represents and warrants to the Parent that the statements contained in this Article IV are true and correct as of the date hereof.

4.1 Organization and Qualification of the Company and its Subsidiaries

Each of the Company and its Subsidiaries is a limited liability company, corporation or other entity duly formed, organized or incorporated, as applicable, and validly existing under the laws of the jurisdiction of its formation, organization or incorporation, as applicable. Each of the Company and its Subsidiaries has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 4.1 of the Disclosure Schedules sets forth each jurisdiction in which the Company and each of its Subsidiaries is licensed or qualified to do business, and the Company and each of its Subsidiaries is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary. Except as disclosed on Section 4.1 of the Disclosure Schedules, complete and correct copies of the articles of incorporation, certificate of formation, operating agreement, by-laws and

similar organizational documents (including any amendments thereto) of the Company and each of its Subsidiaries have been delivered or made available to the Parent and such organizational documents, as so amended, are in full force and effect.

4.2 Due Authority

The Company has full corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the Company of this Agreement, the performance by the Company of its obligations hereunder and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by the other Parties hereto) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

4.3 Capitalization; Subsidiaries

- (a) Section 4.3 of the Disclosure Schedules sets out particulars of the authorized and issued securities (including for avoidance of doubt, any Contractual Equity Interests, warrants, convertible debentures, options or other such similar securities or contractual rights that are convertible or exercisable into Interests or any other membership interests) of the Company and each Subsidiary before and after giving effect to the transactions contemplated in this Agreement, the names of the Persons who are or will be the beneficial owners of those securities and, if those beneficial owners are not the registered owners of the securities, the names of the Persons shown in the operating agreement of the Company or the Subsidiary, as the case may be, as the holder of the securities, and the number and class of securities held by those Persons, together with all outstanding warrants, options and any other rights to acquire securities of the Company or any Subsidiary, in each case immediately before and after Closing.
- (b) All the Interests indicated in Section 4.3 of the Disclosure Schedules have been duly authorized, validly issued, fully paid and non-assessable. Except as indicated in Section 4.3 of the Disclosure Schedules, neither the Company nor any of its Subsidiaries has outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights, and there are no voting trusts, stockholder agreements, membership agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Interests or Contractual Equity Interests.
- (c) Except as set forth in Section 4.3 of the Disclosure Schedules, the Company has good and marketable title, free of all Encumbrances, to the securities of the Subsidiaries which are owned by the Company. Except as set forth in Section 4.3 of the Disclosure Schedules, the Company does not own any securities or have

any other ownership, equity or proprietary interest, directly or indirectly, in any other Person.

- (d) The Interests and Contractual Equity Interests, in each case to be cancelled pursuant to the Merger represent all of the securities, contractual claims to securities and all other instruments, convertible or otherwise, that pertain to the ownership of the Company.

4.4 No Conflicts; Consents

- (a) The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby, do not and will not:
 - (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company or any of its Subsidiaries;
 - (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Company or any of its Subsidiaries;
 - (iii) except for the receipt of Client Consents or as set forth in Section 4.4 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which the Company or any of its Subsidiaries are subject; or
 - (iv) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the assets of the Company or any of its Subsidiaries.
- (b) Except for the filing of the Certificates of Merger or as set forth in Section 4.4 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority (collectively, **“Regulatory Approvals”**) is required by or with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement or any of the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby in the United States.

4.5 Permits

- (a) Each material Permit held by the Company is listed in Section 4.5 of the Disclosure Schedules. True, correct and complete copies of all such Permits have been made available to Parent. The Permits listed in Section 4.5 of the Disclosure Schedules represent all Permits that are required by Law in connection with the operation of the business of the Company and its Subsidiaries as presently

conducted, or in connection with the ownership, operation or use of the Company's assets. To the Company's Knowledge, no event has occurred which, with the giving of notice, lapse of time or both, would reasonably be likely constitute a default under, or in respect of, any such Permit, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each such Permit is valid and in full force and effect, and is renewable by its terms or in the ordinary course, except where such failure to be in full force and effect or to be renewable, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the Company's Knowledge, there is no reason to believe that any such Permit shall be revoked, terminated prior to its normal expiration date, or not renewed pursuant to its terms as a result of the consummation of the transactions contemplated by this Agreement.

- (b) Without limiting the generality of Section 4.5(a):
 - (i) Mittleman Opco is duly registered as an investment adviser under the Investment Advisers Act. The Company and each of its Subsidiaries is duly registered or licensed under applicable Law as an investment adviser in each state, country or other jurisdiction in which the nature of its business so requires; and
 - (ii) except for such registrations and the registrations listed in Section 4.5(b) of the Disclosure Schedules, none of the Company, the Company's Subsidiaries nor any of their respective officers or employees is, or is required to be, registered or appointed as an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, commodity trading adviser, commodity pool operator, registered representative or transfer agent with the SEC, NFA, CFTC or other Governmental Authority. The registrations and appointments referred to in this Section 4.5(b)(ii) or listed in Section 4.5(b) of the Disclosure Schedules were duly made and are in full force and effect.

4.6 AUM

The Measurement Date AUM is a correct account of the AUM on the Measurement Date and calculated in the ordinary course of business consistent with past practice and applicable Law. No written redemption or withdrawal notices have been received by the Company or any Subsidiary that have not been processed prior to the Measurement Date which account for more than 2% of the Measurement Date AUM.

4.7 Investment Advisor Agreements

- (a) Section 4.7(a) of the Disclosure Schedules lists all Investment Advisory Agreements as at the Measurement Date pursuant to which the Company or any of its Subsidiaries provides investment management services and/or investment advisory services to a Client with AUM calculated as of December 31, 2019 in excess of \$10 million (the "**Key Investment Advisory Agreements**"). Other than

as disclosed in Section 4.7(a) of the Disclosure Schedules, from January 1, 2017 to the date hereof, there has been no termination or cancellation of, and no material modification or change in, the business relationship of the Company and its Subsidiaries with any Client that is a party to a Key Investment Advisory Agreement. Since January 1, 2017, the Company and its Subsidiaries has provided investment management and/or investment advisory services in compliance in all material respects with applicable Laws.

- (b) Except for the receipt of Client Consents, no consent or notice by the Company or any of its Subsidiaries is required to be obtained from, or given to any Client in connection with the Closing and the transactions contemplated by this Agreement.
- (c) Since January 1, 2020 to the date hereof, except as disclosed on Section 4.7(c) of the Disclosure Schedules, (i) no party to any Key Investment Advisory Agreement has given written or, to the Company's Knowledge, other notice to the Company or any Subsidiary of the Company of its intention to terminate or materially reduce its relationship with the Company or any Subsidiary of the Company or to adjust the fee schedule with respect to such Key Investment Advisory Agreement in a manner that would materially reduce the fee under such Key Investment Advisory Agreement, and (ii) to the Company's Knowledge, no event has occurred that would permit the removal or termination of the Company or any Subsidiary of the Company with respect to any Key Investment Advisory Agreement (whether now cured or uncured) and no event (whether now cured or uncured) that, with the giving of notice or the passage of time or both, would constitute any such event has occurred in connection with any Fund and no allegation that any such event has occurred has been made in writing to the Company or any of its Subsidiaries.
- (d) Each existing Key Investment Advisory Agreement is in compliance with all applicable Law, including the Investment Company Act and Advisers Act, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.8 Clients

- (a) Section 4.8 of the Disclosure Schedules lists, as of the Measurement Date, for each Client: (i) the Client's name; (ii) whether the Company or its Subsidiaries advise that Client directly or is that Client's subadviser; (iii) the AUM of such Client that are under management by the Company and its Subsidiaries, as adviser or subadviser, and with respect to which the Company and its Subsidiaries are entitled to receive investment management and/or investment advisory fees (including subadvisory fees); and (iv) the fee schedule in effect (including any applicable fee waivers or discounts). To the Company's Knowledge, each of the investments made by each Client has been made in all material respects in accordance with its investment policies and restrictions set forth in the Investment Advisory Agreement with, or if applicable, governing document(s) of, such Client in effect at the time the investments were made and has been held in accordance in all material respects with its respective investment policies and restrictions, to

the extent applicable and in effect at the time such investments were held. Except for the Funds and Separate Managed Accounts listed in Section 4.8 of the Disclosure Schedules, neither the Company nor any Subsidiary provides investment advisory or other services to any Client.

- (b) Neither the Company nor any Subsidiary provides investment advisory or other services to any Registered Fund. In the last three years, each Private Fund:
 - (i) has (A) been excluded from the definition of an “investment company” under the Investment Company Act, (B) not made a public offering of its shares in contravention of Section 7(d) of the Investment Company Act and (C) otherwise not been required to register as a pooled investment vehicle with any Governmental Authority other than the CFTC; and
 - (ii) has not issued or had outstanding any shares or other equity interests that are registered or required to be registered under the U.S. Securities Act or the U.S. Exchange Act or any comparable regulatory regimes.
- (c) To the Company’s Knowledge, no intermediary, placement agent, distributor or solicitor has unlawfully marketed any of the services of any Private Fund or unlawfully marketed or sold any interest in any Fund. There are no outstanding claims against the Company, any of its Subsidiaries or, any Fund or to the Knowledge of the Company, any intermediary, placement agent, distributor or solicitor, with respect to such marketing or sale of the services of any Private Fund or any interest in any Fund by any Person.
- (d) Each Private Fund is duly organized, validly existing and in good standing under the jurisdiction of its organization and has the requisite corporate, trust or partnership power and authority to own its properties and to carry on its business as it is now conducted and is qualified to do business in each jurisdiction where it is required to do so under applicable Law.
- (e) The Company has delivered to Parent, prior to the close of business on May 6, 2020, complete and correct copies of the following documents, including all modifications, amendments and supplements thereto and waivers thereunder (collectively, the “**Fund Contracts**”), each of which is listed in Section 4.8 of the Disclosure Schedules:
 - (i) the custody agreements, administrative service agreements, accounting services agreements, member services agreements and similar agreements by which a Fund is bound or pursuant to which a Fund receives services;
 - (ii) the prospectuses, private placement memoranda and similar selling or offering documents currently utilized for the offering of interests in each Fund;
 - (iii) the declaration of trust and other organizational documents of the Funds, in each case, as currently in effect;

- (iv) the form of document relating to subscriptions for the Funds; and
- (v) any other agreements, contracts and commitments currently in effect and material to the business or operations of a Fund.

Each Fund Contract is valid and binding on the Company and/or each Subsidiary of the Company, and each Fund, that is party thereto, in accordance with its terms and is in full force and effect. Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Fund Contract. Other than the pandemic outbreak of the novel coronavirus, COVID-19, and its associated disruptions and consequences no event or circumstance has occurred that, with notice or lapse of time or both, would reasonably be expected to constitute an event of default under any Fund Contract (whether cured or uncured) or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. There are no material disputes pending or, to the Company's Knowledge, threatened under any Fund Contract.

4.9 Financial Statements

Section 4.9 of the Disclosure Schedules contains correct and complete copies of the Annual Financial Statements and Interim Financial Statements of the Company. The Annual Financial Statements and Interim Financial Statements have been prepared in accordance with Cash Accounting applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Annual Financial Statements). The Annual Financial Statements and the Interim Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The Company maintains a standard system of accounting established and administered in accordance with Cash Accounting. The Company has delivered to Parent complete and correct copies of the audited financial statements of the Private Funds for the year ended December 31, 2019. Such financial statements were prepared in accordance with GAAP, except for Mittleman Global Value Equity Fund, the financial statements for which are prepared in accordance with Australian Accounting Standards, in each case applied on a consistent basis throughout the period involved. Such financial statements are based on the books and records of the Funds, and fairly present in all material respects the financial condition of the Funds as of the respective dates they were prepared and the results of the operations of the Funds for the periods indicated. Each Fund maintains a standard system of accounting established and administered in accordance with GAAP, except for Mittleman Global Value Equity Fund, the financial statements for which are prepared in accordance with Australian Accounting Standards.

4.10 Undisclosed Liabilities

Neither the Company nor any of its Subsidiaries have any Debt or other Liabilities except those which (a) are adequately reflected or reserved against in the Annual Financial Statements, (b)

have been incurred in the ordinary course of business consistent with past practice since the date of the Annual Financial Statements and which are not, individually or in the aggregate, material in amount, or (c) are disclosed in Section 4.10 of the Disclosure Schedules.

4.11 Bankruptcy

Neither the Company nor any of its Subsidiaries is an insolvent Person within the meaning of applicable bankruptcy and insolvency Laws, nor has the Company nor any of its Subsidiaries made an assignment in favor of its creditors or a proposal in bankruptcy to its creditors or any class thereof, nor has it had any petition for a receiving order presented in respect of it. Neither the Company nor any of its Subsidiaries has initiated any Action with respect to a compromise or arrangement with their respective creditors or for its winding-up, liquidation or dissolution. No receiver has been appointed in respect of the Company or any of its Subsidiaries or any of their assets. To the Company's Knowledge, no winding-up, liquidation, dissolution, insolvency, bankruptcy or similar proceedings have been commenced, contemplated or threatened in respect of the Company or any of its Subsidiaries.

4.12 Absence of Certain Changes, Events and Conditions

Since the date of the Annual Financial Statements, the Business has been operated in the ordinary course consistent with past practice and there has not been any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in aggregate, a Material Adverse Effect on the Company, its Subsidiaries or the Business;
- (b) any capital investment in, or any loan to, any other Person by the Company or any of its Subsidiaries;
- (c) acquisition by the Company or any of its Subsidiaries by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;
- (d) action by the Company or any of its Subsidiaries to make, change or rescind any material tax election, amend any material Tax Return (other than the amendment of the Company's tax returns for 2018 and 2019) or take any material position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of materially increasing the Tax liability or materially reducing any Tax asset of the Parent, the Company or any of its Subsidiaries;
- (e) material change in any method of accounting or accounting practice of the Company or any of its Subsidiaries, except as required by Cash Accounting;
- (f) entry into any Contract that would constitute a Material Contract;
- (g) incurrence, assumption or guarantee of any Debt or other Liabilities in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

- (h) transfer, assignment, sale or other disposition of any of the assets of the Company or its Subsidiaries (A) other than as shown or reflected in the Annual Financial Statements or (B) necessary to conduct to the Business, except for the sale of inventory in the ordinary course of business;
- (i) cancellation of any debts or claims or amendment, termination or waiver of any rights of the Company or any of its Subsidiaries or otherwise relating to the Business;
- (j) transfer or assignment of or grant of any license or sublicense under or with respect to any Intellectual Property Assets or Intellectual Property Agreements (except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice);
- (k) abandonment or lapse of or failure to maintain in full force and effect any material Intellectual Property Registration, or failure to take or maintain reasonable measures to protect the confidentiality of any material Trade Secrets included in the Intellectual Property Assets;
- (l) material damage, destruction or loss, or any material interruption in use, of any of the assets of the Company or its Subsidiaries, whether or not covered by insurance;
- (m) acceleration, termination, material modification to or cancellation of any Material Contract;
- (n) capital expenditures by the Company or any of its Subsidiaries in excess of \$50,000, individually or in the aggregate;
- (o) imposition of any Encumbrance upon any of the assets of the Company or its Subsidiaries;
- (p) except as set forth in Section 4.12(p) of the Disclosure Schedules, (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any current or former employees, officers, directors, independent contractors or consultants of the Company or any of its Subsidiaries, other than as provided for in any written agreements or required by applicable Law, (ii) hiring of, change in the terms of employment for, or any termination or resignation of any one employee of the Business with total annual compensation of \$75,000 or greater, or multiple employees with total aggregate annual compensation of \$150,000 or greater, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the Company or any of its Subsidiaries;
- (q) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Company or any of its

Subsidiaries, (ii) Benefit Plan, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

- (r) except as set forth in Section 4.12(r) of the Disclosure Schedules, any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or employees of the Company or any of its Subsidiaries;
- (s) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (t) entry into a new line of business or abandonment or discontinuance of existing lines of business;
- (u) purchase, lease or other acquisition by the Company or any of its Subsidiaries of the right to own, use or lease any property or assets for an amount in excess of \$25,000 individually (in the case of a lease, per annum) or \$50,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice; or
- (v) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

4.13 Material Contracts

- (a) Section 4.13(a) of the Disclosure Schedules lists each of the following Contracts (as amended, either orally or in writing) to which any of the Company or its Subsidiaries are party or by which any of the Company or its Subsidiaries are bound (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Leased Real Property listed or otherwise disclosed in Section 4.16(a) of the Disclosure Schedules and all Intellectual Property Agreements set forth in Section 4.17(b) of the Disclosure Schedules, being “**Material Contracts**”):
 - (i) all Key Investment Advisory Agreements;
 - (ii) all Contracts requiring payments in excess of \$50,000 under any one Contract or multiple Contracts with any one counterparty;
 - (iii) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person, that could reasonably result in a Material Adverse Effect;
 - (iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

- (v) all material broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;
 - (vi) all employment agreements with employees earning more than \$125,000 per annum and all Contracts with independent contractors or consultants (or similar arrangements) requiring annual payments in excess of \$125,000;
 - (vii) except for Contracts relating to trade receivables, all Contracts relating to Debt that will remain outstanding after Closing;
 - (viii) all Contracts under which the Company or any of its Subsidiaries covenants and agrees to a counterparty that it shall not offer terms more favorable to any other Person without first offering such terms to such counterparty;
 - (ix) all Contracts with any Governmental Authority;
 - (x) all Contracts relating to any interest rate, foreign exchange, derivatives or hedging transactions;
 - (xi) all Contracts that limit or purport to limit the ability of the Company or any of its Subsidiaries to compete in any line of business or with any Person or in any geographic area or during any period of time;
 - (xii) all joint venture, partnership or similar Contracts;
 - (xiii) all Contracts for the sale of any of the assets of the Company or any of its Subsidiaries or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the assets of the Company or any of its Subsidiaries;
 - (xiv) all powers of attorney with respect to the Business or the Company or any of its Subsidiaries;
 - (xv) all collective bargaining agreements or Contracts with any Union; and
 - (xvi) all other Contracts that are material to the Company and its Subsidiaries or the operation of the Business and not previously disclosed pursuant to this Section 4.13.
- (b) Each Material Contract is valid and binding on the Company and/or each Subsidiary of the Company that is party thereto, in accordance with its terms and is in full force and effect. Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time

or both, would reasonably be expected to: (A) constitute an event of default under any Material Contract (whether cured or uncured), (B) result in a termination thereof; or (C) cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. None of the Material Contracts is currently in the process of being renegotiated nor, to the Company's Knowledge, do any of the parties to any Material Contract intend to renegotiate such Material Contract. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to the Parent. There are no material disputes pending or, to the Company's Knowledge, threatened under any Material Contract.

4.14 Title to Assets

The Company and/or its Subsidiaries have good and valid title to, or a valid leasehold (or subleasehold) interest in, all of the assets reflected in the Annual Financial Statements or acquired after the date of the Annual Financial Statements (other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since such date) other than as may, either individually or in aggregate, result in a Material Adverse Effect. All such assets (including leasehold interests) are free and clear of all Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (a) those items set forth in Section 4.14 of the Disclosure Schedules;
- (b) liens for Taxes not yet due and payable or taxes that the Company is contesting in good faith through appropriate proceedings;
- (c) easements, rights of way, zoning ordinances and other similar encumbrances affecting Leased Real Property which are not, individually or in the aggregate, material to the Business, which do not prohibit or interfere with the current operation of any Leased Real Property and which do not render title to any Leased Real Property unmarketable; or
- (d) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business.

4.15 Condition and Sufficiency of Assets

Except as set forth in Section 4.15 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company and its Subsidiaries are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. Except as set forth in Section 4.15 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company

or its Subsidiaries, together with all other properties and assets of the Company and its Subsidiaries are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted.

4.16 Real Property

- (a) Section 4.16(a) of the Disclosure Schedules sets forth each parcel of Real Property leased by the Company or any of its Subsidiaries (the “**Leased Real Property**”), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which the Company or any of its Subsidiaries hold any Leased Real Property (collectively, the “**Leases**”). The Company has made available to the Parent a true and complete copy of each Lease. With respect to each Lease:
 - (i) such Lease is valid, binding, enforceable and in full force and effect, and the Company enjoys peaceful and undisturbed possession of the Leased Real Property;
 - (ii) neither the Company nor any of its Subsidiaries are in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and the Company or its Subsidiaries, as applicable, have paid all rent due and payable under such Lease;
 - (iii) neither the Company nor any of its Subsidiaries has received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by a the Company or any of its Subsidiaries under any of the Leases and, to the Knowledge of the Company, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;
 - (iv) neither the Company nor any of its Subsidiaries has subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and
 - (v) neither the Company nor any of its Subsidiaries has pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.
- (b) Neither the Company nor any of its Subsidiaries has received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or, to the Company’s Knowledge, threatened zoning, building code or other moratorium proceedings, or similar matters which

could reasonably be expected to adversely affect the ability to operate the Leased Real Property as currently operated in any material respect. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

- (c) The Leased Real Property is sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the Real Property necessary to conduct the Business as currently conducted.
- (d) Neither the Company nor any of its Subsidiaries owns, or has ever owned, any Real Property.

4.17 Intellectual Property

- (a) Section 4.17(a) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Intellectual Property Assets; (iii) all proprietary Software included in the Intellectual Property Assets; and (iv) all other Intellectual Property Assets that are used in the conduct of the Business as currently conducted. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. The Company has provided the Parent with true and complete copies of all material file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.
- (b) Section 4.17(b) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements. The Company has provided the Parent with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect. Neither the Company nor any of its Subsidiaries is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.
- (c) Except as set forth in Section 4.17(c) of the Disclosure Schedules, (i) the Company and/or its Subsidiaries are the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, and have the valid and enforceable right to use all other Intellectual Property used in or

necessary for the conduct of the Business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances, and (ii) neither the Company nor any of its Subsidiaries have granted any licenses in any of Intellectual Property Registrations, Intellectual Property Assets or other Intellectual Property used in or necessary for the conduct of the Business as currently conducted. The Company has entered into binding, valid and enforceable written Contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with the Company or its Subsidiaries whereby such employee or independent contractor (i) acknowledges the Company's exclusive ownership of all Intellectual Property Assets invented, created or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company; (ii) grants to the Company a present, assignable, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (iii) irrevocably waives any right or interest, including any moral rights, regarding such Intellectual Property, to the extent permitted by applicable Law.

- (d) Neither the execution, delivery or performance of this Agreement or the Ancillary Agreements, nor the consummation of the transactions contemplated hereunder or thereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company and its Subsidiaries' right to own or use any Intellectual Property Assets or any Intellectual Property subject to any Intellectual Property Agreement.
- (e) All of the Intellectual Property Assets are valid and enforceable, and all Intellectual Property Registrations are subsisting and in full force and effect. The Company has taken all necessary steps to maintain and enforce the Intellectual Property Assets and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements.
- (f) The conduct of the Business as currently and formerly conducted, including the use of the Intellectual Property Assets and the Intellectual Property licensed under the Intellectual Property Agreements in connection therewith, and the products, processes, and services of the Business do not infringe, misappropriate, or otherwise violate the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets.
- (g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding) settled, pending or, to the Company's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by the Company or any of its Subsidiaries; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual

Property Assets; or (iii) by the Company, any of its Subsidiaries or any other Person alleging any infringement, misappropriation, or violation by any Person of any Intellectual Property Assets. To the Company's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action. Neither the Company nor any of its Subsidiaries are subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Intellectual Property Assets.

4.18 Information Technology

- (a) The Company and its Subsidiaries have taken all commercially reasonable steps and implemented all commercially reasonable safeguards to ensure that the IT Systems are substantially free from Harmful Code.
- (b) The Company and its Subsidiaries have adopted, maintained and enforced commercially reasonable policies regarding use and integrity of the IT Systems by their respective employees and independent contractors.
- (c) The IT Systems are sufficient for the current needs of the Business, including as to data processing, data transport, data storage, capacity and scalability.
- (d) The IT Systems are in good working condition to perform all computing, information technology and data processing operations necessary for the operation of the Business.
- (e) In the two-year period prior to the date of this Agreement, to the Company's Knowledge, there has been no failure, breakdown or continued substandard performance of any of the IT Systems that has caused a disruption or interruption in or to the operations of the Business, the IT Systems have not been subject to any Security Incident and no Person has gained unauthorized access to any of the IT Systems.
- (f) The Company and its Subsidiaries have taken all commercially reasonable steps to provide for the remote-site back-up of data and information critical to the conduct of the Business in a commercially reasonable attempt to avoid disruption to, or interruption in, the conduct of such Business, including the arrangement of appropriate back-up systems, and have taken all commercially reasonable steps and implemented all commercially reasonable procedures appropriate to safeguard the IT Systems and prevent unauthorized access thereto, which may include contracting with a qualified third party service provider.
- (g) The Company and/or its Subsidiaries own or have valid licenses, leases, service agreements or other contractual arrangements in place to use all of the IT Systems in the operation of the Business as currently conducted, which licenses, leases, service agreements and similar contractual arrangements are fully reflected in the Annual Financial Statements.

- (a) All personal data collected and used by the Company and its Subsidiaries in connection with the Business is protected by commercially reasonable security safeguards (which are commensurate to its level of sensitivity) and has been collected, used, stored and disclosed in accordance with applicable privacy Laws in all material respects. Neither the Company nor any of its Subsidiaries has (i) experienced any actual, or to the Company's Knowledge, alleged or suspected, data breach or other security incident involving personal information in its possession or control or (ii) received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and, to the Company's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

4.19 Accounts Receivable

Section 4.19 of the Disclosure Schedules sets forth the accounts receivable of the Company and its Subsidiaries as of the Measurement Date. All such accounts receivable (a) have arisen from bona fide transactions entered into by the Company or its Subsidiaries involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute or will constitute only valid, undisputed claims of the Company or its Subsidiaries not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts to be shown on Section 4.19 of the Disclosure Schedules, are collectible in full within sixty (60) days after billing. The reserve for bad debts to be shown on Section 4.19 of the Disclosure Schedules, has been determined in accordance with Cash Accounting, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

4.20 Insurance

Section 4.20 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Company or its Subsidiaries (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to the Parent. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Other than as stated in Section 4.20 of the Disclosure Schedules, neither the Company nor any of its Subsidiaries has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have been paid in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company or any of its Subsidiaries. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the Business pending under any such

Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Neither the Company nor any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which the Company or any of its Subsidiaries is a party or by which it is bound.

4.21 Legal Proceedings; Governmental Orders

There are no Actions pending or, to the Company's Knowledge, threatened (a) against the Company or any of its Subsidiaries or affecting their assets or the Business; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or the Ancillary Agreements. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Company, its Subsidiaries or the Business.

4.22 Compliance With Laws

- (a) The Company, its Subsidiaries and the Funds are and have been in compliance with all Laws applicable to the Company or its Subsidiaries and/or their respective businesses and operations.
- (b) None of the Company, any of its Subsidiaries or any Fund, or, to the Company's Knowledge, any of employee or executive of the Company or the Company's Subsidiaries, has received a notice of non-compliance with applicable Laws or investigation with respect to non-compliance with applicable Laws, and, to the Company's Knowledge, there are no facts that would give rise to a notice of material non-compliance with any such Law and no internal investigation or investigation by any Governmental Authority with respect to the Company or any of its Subsidiaries is pending.
- (c) The Company and its Subsidiaries have timely filed all reports required to be filed with Governmental Authorities in connection with the management of and services provided to the Clients or in connection with the Funds, and no such report contained a material misrepresentation at the time they were filed.
- (d) The offering documents for the Funds, if any (including any prospectus, private placement memorandum or offering memorandum), as of the date each such document was delivered to a Client, did not, as of such respective date, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (e) Neither the Company nor any of its Subsidiaries or Funds has obtained any no-action letter, exemptive order or similar relief from the SEC.

- (f) The Company has delivered to Parent complete and correct copies of all comment letters and formal Company responses between the Company or any of its Subsidiaries, on the one hand, and the SEC, the NFA, the CFTC, any state regulatory authority or other Governmental Authority, on the other hand, since January 1, 2017 relating to any examination or inquiry by the SEC, the NFA, the CFTC, a state regulatory authority or other Governmental Authority with respect to the Company's and its Subsidiaries' compliance with applicable securities Laws.
- (g) Neither the Company, nor any of its Subsidiaries, other than Mittleman Opco, is registered or required to be registered as an investment adviser under the Advisers Act. To the Knowledge of the Company, no employee of the Company or any of its Subsidiaries conducts investment management or investment advisory or subadvisory activities except (i) as part of his or her employment with the Company or its Subsidiaries, (ii) managing his or her own investments or the investments of family members (including as an executor or similar agent), including as permitted by the family office exemption pursuant to Advisers Act Rule 202(a)(11)(G)-1, or (iii) on behalf of charitable organizations as a member of a board or committee for which no compensation is paid.
- (h) Mittleman Opco has, at all required times for the last three (3) years, been duly registered as an investment adviser with the SEC under the Advisers Act and is not prohibited by any provision of the Advisers Act from acting as an investment adviser. Mittleman Opco is duly registered, licensed or qualified as an investment adviser in each jurisdiction where the conduct of its business requires such registration and is in compliance in all material respects with all U.S. federal, U.S. state and foreign laws requiring such registration, licensing or qualification.
- (i) Mittleman Opco has filed, on a timely basis and in a proper manner, and paid the associated fees and assessments for, all registration statements on Form ADV with the SEC and comparable and other filings required under applicable securities Laws. All such filings were prepared in all material respects in accordance with applicable securities Laws. The Form ADV for Mittleman Opco, since January 1, 2015, as of the date of filing of each such Form ADV with the SEC (and with respect to Form ADV Part 2 or its equivalent, its date), did not, as of such respective date, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.
- (j) Mittleman Opco has in effect, and at all times required by applicable Law has had in effect, (A) a written policy regarding insider trading and the protection of material non-public information, (B) a written code of ethics, as required by Rule 204A-1 under the Advisers Act; (C) policies and procedures with respect to the protection of nonpublic Personal Information about customers, clients and other third parties designed to assure compliance with applicable Law, (D) a proxy voting policy as required by Rule 206(4)-6 under the Advisers Act, (E) policies and procedures governing the receipt, use or provision of "brokerage and research

services” (as such term is defined in Section 28(E) of the U.S. Exchange Act) through “soft dollar” arrangements or otherwise; (F) anti-money laundering and customer identification programs in compliance with applicable Law; (G) policies and procedures with respect to selecting money managers and/or private funds for investment that are consistent with those disclosed to investors in the Funds; (H) policies and procedures with respect to business continuity plans in the event of business disruptions; (I) policies and procedures for the allocation of securities purchased for its clients that comply with applicable Laws; (J) policies and procedures for compliance with the pay-to-play requirements under Rule 205(4)-5; and (K) all other policies and procedures required by Rule 206(4)-7 under the Advisers Act (all of the foregoing policies being referred to collectively as “**Adviser Compliance Policies**”), and has designated and approved an appropriate chief compliance officer in accordance with Rule 206(4)-7 of the Advisers Act or any applicable Law. Complete and correct copies of all such Adviser Compliance Policies (including any reports or filings under such Adviser Compliance Policies since January 1, 2017 relating to compliance by Mittleman Opco and its employees) have been made available to the Parent. All such Adviser Compliance Policies comply with applicable Law, including Sections 204A and 206 of the Advisers Act, and, since January 1, 2017 there have been no material violations or allegations of violations by the Company or its Subsidiaries or any employee of the Company or its Subsidiaries of such Adviser Compliance Policies, and there has been no written allegation of any material violation of the Adviser Compliance Policies made to the Company or any of its Subsidiaries or, to the Company’s Knowledge, any other Person, including any Governmental Authority. The Company has conducted an oral or written review of the adequacy of such Adviser Compliance Policies for each 12-month period ended April 30 from 2017 through 2019 and, except as set forth in Section 4.22(j) of the Disclosure Schedules, the Company has determined, based upon such reviews, that the Adviser Compliance Policies have been effectively implemented in all material respects and in accordance with applicable Law. The Company’s policies with respect to avoiding conflicts of interest are as stated in the most recent Form ADV filed by it.

- (k) Neither the Company or any of its Subsidiaries, nor to the Knowledge of the Company, any of their respective members, directors, officers, employees or contractors has been enjoined, indicted, convicted or made the subject of a disciplinary proceeding, consent decree, or administrative order on account of a violation of applicable securities Laws.
- (l) None of the Company, any of its Subsidiaries or the Funds has been named or threatened to be named in any enforcement action, cease and desist order or consent and settlement by or with a Governmental Authority.
- (m) To the Company’s Knowledge, no disciplinary event, order, judgment or decree has occurred or is threatened that would impose disqualification on the Company, any of its Subsidiaries or any Client pursuant to Rule 506(d) under Regulation D.

- (n) Mittleman Opco or, to the Company's Knowledge, any "person associated with" the Mittleman Opco (within the meaning of the Advisers Act) has, during the 10 years prior to the date hereof, (x) been convicted of any felony or of any misdemeanor involving fraud or involving investments or an investment-related business, or (y) been subject to any disqualification that would be a basis for denial, suspension or revocation of registration of an investment adviser under Section 203(e) of the Advisers Act, and there are no proceedings of any Governmental Authority pending or, to the Company's Knowledge, threatened that would reasonably be expected to result in any such disqualification, denial, suspension or revocation.
- (o) Neither the Company nor any of its Subsidiaries has sponsored or participated in the public distribution or private offering of interests in entities other than the Funds. The offerings and sales of the interests in the Funds complied in all material respects with applicable securities Laws. The Private Funds' offering documents and with respect to the offerings and sales did not, as of their respective dates, contain any untrue statement of a material fact or omit to state any material fact required to be stated in them or necessary in order to make the statements in them, in light of the circumstances under which they were made, not misleading.
- (p) No offer or sale of any interest in any Private Fund was required to be registered with the SEC or any state securities regulator. The Private Funds have filed the prospectuses, private placement memoranda, annual information forms, registration statements, proxy statements, financial statements, other forms, reports, advertisements and other documents required to be filed with applicable regulatory authorities, and any amendments to them (collectively, the "**Fund Reports**"), and paid the associated fees and assessments. The Fund Reports of the Private Funds have been prepared in all material respects in accordance with applicable securities Laws and did not at the time they were filed contain any untrue statement of a material fact or, solely with respect to prospectuses and private placement memoranda, omit to state a material fact required to be stated in them or necessary to make the statements in them, in the light of the circumstances under which they were or are made, not misleading.
- (q) All performance information provided, presented or made available by the Company or any of its Subsidiaries to any Client or potential client or with respect to any Fund has complied in all material respects with applicable Law. The Company maintains all documentation necessary to form a basis for, demonstrate or recreates the calculation of the performance or rate of return of all accounts that are included in a composite (current and historical performance results) as required by applicable Law.
- (r) No Fund has been enjoined, indicted, convicted or made the subject of disciplinary proceedings, consent decrees or administrative orders on account of a violation of applicable securities Law.

4.23 Environmental Matters

- (a) The Company and its Subsidiaries are currently and have been in compliance with all Environmental Laws and Environmental Permits. There is no pending or, to the Company's Knowledge, threatened Action against the Company or any of its Subsidiaries relating to any Environmental Law or Environmental Permit. Neither the Company nor any of its Subsidiaries is a party to or, to the Company's Knowledge, bound by, any order, consent order, or other agreement or commitment between the Company or any of its Subsidiaries and (i) any Governmental Authority which imposes any Liability under any Environmental Law, or (ii) any other Person. There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the assets of the Company and its Subsidiaries, and neither the Company nor any of its Subsidiaries has received an Environmental Notice that any of the Leased Real Property has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, the Company or any of its Subsidiaries.
- (b) Neither the Company nor any of its Subsidiaries have stored, treated, disposed of, arranged for or permitted the disposal of, transported, handled or released any substance (including any Hazardous Materials) or owned, occupied or operated any premises or property in a manner that has given or could give rise to any Losses, Liabilities, or Environmental Claims pursuant to any Environmental Laws or Environmental Permits. Neither the Company nor any of its Subsidiaries have retained or assumed by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

4.24 Employee Benefit Matters

- (a) Section 4.24(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, equity or equity-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company or any of its Subsidiaries for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any of its Subsidiaries or any spouse or dependent of such individual, or under which the Company or any of its Subsidiaries has or may have any Liability, contingent or otherwise (as listed on Section 4.24(a) of the Disclosure Schedules, each, a "**Benefit Plan**").

- (b) With respect to each Benefit Plan, the Company has made available to the Parent accurate, current and complete copies of each of the following (as applicable): (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan years; (viii) the most recent non-discrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence to or from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.
- (c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws. Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company or any of its Subsidiaries or any of their ERISA Affiliates or, with respect to any period on or after the date hereof, the Parent or any of their Affiliates, to a penalty under Section 502 of ERISA or to Taxes or other penalty under Sections 4975, 4980B or 4980H of the Code.
- (d) None of the Company, any of its Subsidiaries nor any of their respective ERISA Affiliates has maintained, contributed to, been obligated to contribute to, or had

any Liability to (i) any Multiemployer Plan, (ii) any plan subject to Title IV of ERISA, or (iii) any plan subject to Section 412 of the Code or Section 302 of ERISA, (iv) any “multiple employer plan” within the meaning of Section 413(c) of the Code or Section 210 of ERISA, or (v) a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA.

- (e) Other than as required under Sections 601 to 608 of ERISA or similar state Law, no Benefit Plan or other arrangement provides post-termination or retiree health or welfare benefits to any individual for any reason.
- (f) Except as set forth in Section 4.24(f) of the Disclosure Schedules, there is no pending or, to the Company’s Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.
- (g) There has been no material amendment to, announcement by the Company or any of its Subsidiaries relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a *de minimis* basis) with respect to any director, officer, employee, consultant or independent contractor of the Company or any of its Subsidiaries, as applicable. Neither the Company nor any of its Subsidiaries has any commitment or obligation or has made any representations to any director, officer, employee, consultant or independent contractor of the Company or any of its Subsidiaries, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.
- (h) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including, notices, rulings and proposed and final regulations) thereunder. Neither the Company nor any of its Subsidiaries has any obligation to gross up, indemnify or otherwise reimburse any individual for any Taxes, interest or penalties incurred pursuant to Section 409A of the Code or any other provision of the Code.
- (i) Except as set forth in Section 4.24(i) of the Disclosure Schedules, neither the execution of this Agreement, the Ancillary Agreements nor any of the transactions contemplated hereunder or thereunder will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company or any of its Subsidiaries to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual;

- (iii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (iv) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (v) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.
- (j) The Company and each of its Subsidiaries is in compliance with all applicable requirements of the Patient Protection and Affordable Care Act of 2010, as amended, and all regulations thereunder (together, the “ACA”), as well as any similar provisions of state or local Laws. No excise Tax, assessment, penalty, or assessable payment (under Sections 4980D and 4980H of the Code or any other applicable Laws) is outstanding, has accrued, has arisen, or has been assessed with respect to any period prior to the Closing by virtue of any the Company or its Subsidiaries’ failure to (a) offer “minimum essential coverage” to full-time employees and their dependents under an “eligible employer-sponsored plan,” each within the meaning of Code §5000A(f)(1)(B); (b) offer coverage that is “affordable” or provides “minimum value,” each within the meaning of Code §36B(c)(2)(C) and §4980H(b) and related regulations; or (c) offer, pay for, or otherwise subsidize group health plan or other welfare benefits coverage required by any applicable state or local Law. The Company and each of its Subsidiaries has maintained, in all material respects, all records necessary to demonstrate its compliance with the ACA and any other similar state or local Law. The Company and each of its Subsidiaries has timely and correctly made all filings with Governmental Authorities, and distributed all notices, forms and disclosures to individuals, in each case as required under the ACA or state or local Law, as the case may be.
- (k) All contributions, premiums and other payments due or required to have been made by the Company and each of its Subsidiaries to (or with respect to) any Benefit Plan have been timely paid or properly accrued on the Annual Financial Statements and Interim Financial Statements in accordance with Cash Accounting.
- (l) None of the Company, its Subsidiaries or any Fund, nor the assets of any of them are considered “plan assets” within the meaning of ERISA or other applicable Law. None of the Company, its Subsidiaries or any Fund have engaged in any nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

4.25 Employment Matters

- (a) Section 4.25(a) of the Disclosure Schedules contains a list of all material employee handbooks, manuals, employment Contracts, independent contractor Contracts, consultant Contracts, policies, procedures and guidelines relating to the employees of the Company and its Subsidiaries that are currently in effect or have been in effect at any time in the three (3) years immediately preceding the Closing Date, correct and complete copies of which have been delivered to Parent; and a list of all persons who are employees, independent contractors or consultants of

the Company or any of its Subsidiaries as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; (vi) aggregate compensation for the past 12 months; (vii) exempt or non-exempt status, as applicable; (viii) status as a contractor or employee (including, if applicable, status as a Person in respect of whom the Company is required to complete a Form 1099-MISC); and (ix) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in Section 4.25(a) of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company or any of its Subsidiaries for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of the Company or any of its Subsidiaries with respect to any compensation, commissions, bonuses or fees. No Company or Subsidiary employee has, on or before the date of this Agreement, given or been given notice of termination with the Company or a Subsidiary, as applicable, and to the Company's Knowledge, no Company or Subsidiary employee has expressed plans to terminate employment with the Company or the Subsidiary after the Closing Date.

- (b) Except as set forth in Section 4.25(b) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries are, and have never been a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been any Union representing or purporting to represent any employee of the Company or any of its Subsidiaries, and, to the Company's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its Subsidiaries or any of their respective employees. Neither the Company nor any of its Subsidiaries have any duty to bargain with any Union.
- (c) The Company and its Subsidiaries are and have been in compliance with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, consultants and independent contractors of the Company or any of its Subsidiaries, including all Laws relating to classification of contractors and employees, labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by the Company or any of its Subsidiaries as consultants or independent contractors are

properly classified as independent contractors under all applicable Laws. All employees of the Company and its Subsidiaries are classified as exempt under the *Fair Labor Standards Act* and state and local wage and hour laws are properly classified. There are no Actions against the Company or any of its Subsidiaries pending, or to the Company's Knowledge, threatened to be brought or filed, by or with any Governmental Authority, under any private dispute resolution procedure or internally in connection with the employment of any current or former applicant, employee, consultant or independent contractor of the Company or any of its Subsidiaries, including any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws. Every employee who requires permission and/or authorization to work in the jurisdiction in which he or she carries out employment for the Company or a Subsidiary has presented to the Company current and appropriate permission and/or authorization to work in that jurisdiction, and any such permission or authorization will be valid upon the consummation of the transactions contemplated by this Agreement.

- (d) To the Company's Knowledge, neither the Company nor its Subsidiaries are subject to any affirmative action obligations under any Law or are a government contractor or subcontractor for purposes of any Law with respect to terms and conditions of employment.
- (e) Neither the Company nor its Subsidiaries have engaged in any plant closing or employee layoff activities with respect to which there are unsatisfied liabilities under the Worker Adjustment and Retraining Notification Act of 1988 or any similar mass layoff or termination Law of any jurisdiction.
- (f) To the Company's Knowledge, no employee of the Company or any Subsidiary is a party to, or otherwise bound by, any agreement or arrangement, including confidentiality, noncompetition, non-solicitation, or proprietary rights agreement, between such employee and any other Person that in any way adversely affects or would reasonably be expected to adversely affect: (i) the performance of his or her duties as an employee of the Company or any Subsidiary, as applicable; (ii) the ability of the Company or any Subsidiary, as applicable, to conduct its business; or (iii) the ability of such individual to assign to the Company or any Subsidiary, as applicable, any rights to any invention, improvement or discovery. As of the date of this Agreement, to the Knowledge of the Company, no employee, independent contractor or consultant is in violation of any term of any employment contract, independent contractor contract, service contract, non-disclosure agreement or non-competition agreement with the Company or any Subsidiary.

- (g) Except as set out on Section 4.25(a) of the Disclosure Schedules, the Company has not paid, nor will it be required to pay, any bonus, fee, distribution, remuneration or other compensation to any employee or independent contractor that will be triggered by the entering into of this Agreement or the consummation of the transactions contemplated by this Agreement.

4.26 Taxes

Except as set forth in Section 4.26 of the Disclosure Schedules:

- (a) All Tax Returns for income taxes and all other material Tax Returns with respect to the Company and its Subsidiaries required to be filed for any Pre-Closing Tax Period have been timely filed, and all such Tax Returns are, true, complete and correct in all respects. All Taxes shown thereon as due and owing by the Company or any of its Subsidiaries have been timely paid. No written claim has been made by any taxing authority in any jurisdiction where the Company or its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries are, or may be, subject to Tax by that jurisdiction.
- (b) The Company and each of its Subsidiaries has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party in connection with the Business, and complied with all information reporting and backup withholding provisions of applicable Law.
- (c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company or its Subsidiaries, including with respect to any adjustment pursuant to Section 6221 of the Code.
- (d) All Tax deficiencies asserted, or assessments made, against the Company or any of its Subsidiaries as a result of any examinations by any taxing authority have been fully paid.
- (e) Neither the Company nor any of its Subsidiaries is a party to any Action by any taxing authority and there are no pending or threatened Actions by any taxing authority to which the Company or any of its Subsidiaries would reasonably expected to become party, including with respect to any adjustment pursuant to Section 6221 of the Code.
- (f) There are no Encumbrances for Taxes upon any of the assets of the Company or its Subsidiaries nor is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the assets of the Company or its Subsidiaries (other than for current Taxes not yet due and payable or which are being contested in good faith).
- (g) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

- (h) Neither the Company nor any of its Subsidiaries is a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.
- (i) No Seller of the Company is a “foreign person” as that term is used in Treasury Regulation Section 1.1445-2.
- (j) Neither the Company nor any of its Subsidiaries is a party to, or a promoter of, any “listed transaction” as defined in Code §6707A(c)(2) and Reg. §1.6011-4(b)(2).
- (k) Neither the Company nor any of its Subsidiaries has ever been a member of a group filing a consolidated federal income Tax Return or a combined, consolidated, unitary or other affiliated group Tax Return for state, local or non-U.S. Tax purposes (other than a group the common parent of which is the Company), and neither the Company nor any of its Subsidiaries has any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any corresponding provision of state, local or non-U.S. Tax law), or as a transferee or successor, or by Contract or pursuant to applicable Law.
- (l) Neither the Company nor any of its Subsidiaries has been a party to any transaction treated by the parties as a distribution to which Section 355 of the Code (or any corresponding or similar provision of state, local or foreign Law) applies.
- (m) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period ending after the Closing Date as a result of any (i) change in method of accounting for a Pre-Closing Tax Period, (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Law) executed on or prior to the Closing Date, (iii) intercompany transaction entered into prior to the Closing Date, (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) prepaid amount received prior to the Closing or (vi) election under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign Law).
- (n) From the date of its formation until December 31, 2019, the Company had been properly treated a partnership and, from January 1, 2020, until the date hereof, the Company has been properly treated as an “S corporation”, in each case for U.S. federal and state income tax purposes and at all times since the date of their respective formations, the Subsidiaries have been properly treated as a “qualified subchapter S subsidiary” that is disregarded as separate from the Company for U.S. federal and state local income tax purposes or classified as a disregarded entity separate from its owner, within the meaning of Treasury Regulation Section 301.7701-3(b)(1) for U.S. federal income tax purposes.

- (o) Neither the Company nor any of its Subsidiaries are currently, and will not at any time before the Closing Date be, liable for any Tax under Section 1374 of the Code (or any corresponding or similar provision of state, local or foreign Law).

4.27 Books and Records

The records of the Company and its Subsidiaries are reasonably complete and correct and have been maintained in accordance with sound business practices typical in the industry in which the Company operates. At the Closing, all of those books and records will be in the possession of the Company or its Subsidiaries.

4.28 Anti-Corruption

- (a) Neither the Company nor any of its Subsidiaries nor any of their respective directors, officers, current employees, agents or representatives, has, directly or indirectly, offered, promised, agreed, paid, authorized, given or taken any act in furtherance of any such offer, promise, agreement, payment or authorization on behalf of the Company or any of its Subsidiaries, anything of value (including any contribution, gift, bribe, payoff, influence payment, kick-back), directly or indirectly, to any official of a Governmental Authority, any political party or official thereof or any candidate for political office, for the purpose of any of the following:
 - (i) improperly influencing any action or decision of such person in such Person's official capacity, including a decision to fail to perform such Person's official function in order to obtain or retain an advantage in the course of business;
 - (ii) improperly inducing such person to use such person's influence with any Governmental Authority to affect or influence any act or decision of such Governmental Authority to assist the Company or any of its Subsidiaries in obtaining or retaining business for, with, or directing business to, any person or otherwise to obtain or retain an improper advantage in the course of business; or
 - (iii) where such payment would constitute a bribe, payoff, influence payment, kickback or illegal or improper payment to assist the Company or any of its Subsidiaries in improperly obtaining or retaining business for, with, or directing business to, any person or would otherwise be contrary to applicable Laws.
- (b) Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of their respective directors, officers, current employees, agents or representatives, has directly or indirectly made any improper payment to any Person (other than a Person referenced in Section 4.28(a)), in violation of applicable Laws or which could reasonably be expected to subject the Company or any of its Subsidiaries to any material damage or penalty in any civil, criminal or governmental litigation or Action.

- (c) Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of their respective directors, officers, current employees, agents or representatives, has taken any action that is prohibited by or would cause the Company or any of its Subsidiaries to be in violation of the substantive prohibitions or requirements of the *Foreign Corrupt Practices Act of 1977 (United States)* or any similar legislation prohibiting corruption, bribery and money laundering in any jurisdiction in which it conducts the Business and to which it is subject.
- (d) Neither the Company nor any of its Subsidiaries has (i) conducted or initiated any review, audit or internal investigation that concluded that the Company or any of its Subsidiaries or any of their respective directors, officers, employees, agents or representatives has violated any Laws prohibiting corruption, bribery or money laundering or committed any wrongdoing thereunder, or (ii) made a voluntary, directed or involuntary disclosure to any Governmental Authority responsible for enforcing anti-corruption, anti-bribery and money laundering Laws, in each case with respect to any alleged act or omission arising under or relating to non-compliance with any such Laws, or received any notice, request or citation from any person alleging non-compliance with any such.

4.29 Related-Party Transactions

- (a) Except as set forth in Section 4.29(a) of the Disclosure Schedules, to the Company's Knowledge, no Seller nor any affiliate or spouse or family member of any Seller (i) controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any person or entity which is (A) a supplier, customer, landlord, tenant, creditor or debtor of the Company, (B) engaged in a business related to the Business of the Company or (C) is a participant in any transaction to which the Company is a party or (ii) is a party to any contract with the Company.
- (b) Except as set forth in Section 4.29(b) of the Disclosure Schedules, to the Company's Knowledge, no Seller, officer, director, member, or former officer, director, member of the Company is a party to any contract with the Company or has any right to receive any amount of cash or other property from the Company.

4.30 Privacy

The Company and its Subsidiaries that have or have had access to Personal Information or Behavioral Information (collectively, "**Private Information**") collected by or on behalf of the Company or any of its Subsidiaries comply, and have at all times during the prior three (3) years complied, in all material respects with all (a) applicable Laws, directives and guidance, (b) contractual obligations, (c) internal and public-facing privacy and/or security policies of the Company, (d) public statements that the Company has made regarding its privacy and/or data security policies or practices and (e) rules of applicable self-regulatory organizations (collectively, "**Privacy Laws and Requirements**") relating to (i) the privacy of users of any of the Company's or its Subsidiaries' web properties, products and/or services; (ii) the collection, use, storage, retention, disclosure, transfer, disposal, or any other processing of any Private

Information collected or used by the Company, its Subsidiaries or third parties having access to such information; and (iii) the transmission of marketing or commercial messages through any means, including, without limitation, via email, text message and/or any other means. The execution, delivery and performance of this Agreement comply with all Privacy Laws and Requirements. The Company and its Subsidiaries maintain privacy policies that describe its policies with respect to the collection, use, storage, retention, disclosure, transfer, disposal or other processing of Private Information. True and correct copies of all such privacy policies have been made available to Parent. Each such privacy policy and all materials distributed or marketed by the Company or its Subsidiaries have at all times included all information and made all disclosures to users or customers required by all Privacy Laws and Requirements, and none of such disclosures made or contained in any such privacy policy or in any such materials has been inaccurate, misleading or deceptive or in violation of any Privacy Laws and Requirements. There is no complaint to, or any audit, proceeding, investigation (formal or informal) or Action currently pending against, the Company or any of its Subsidiaries by any private party or any other Governmental Authority with respect to the collection, use, retention, disclosure, transfer, storage or disposal of Private Information. The Company and its Subsidiaries have at all times taken all steps reasonably designed (including implementing and monitoring compliance with adequate measures with respect to technical and physical security) to protect Private Information against loss and against unauthorized access, use, modification, disclosure or other misuse. To the Company's Knowledge, there has been no unauthorized access to, disclosure of and/or other misuse of any Private Information nor has there been any breach in security of any of the information systems used to store or otherwise process any Private Information.

4.31 Money Laundering

The operations of the Company, its Subsidiaries, and the Funds are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the rules and regulations thereunder, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the "**Money Laundering Laws**"); and no action, suit or proceeding by or before any Governmental Authority involving the Company, any Subsidiary, any Fund with respect to the Money Laundering Laws is pending or, to the best Knowledge of the Company, threatened.

4.32 OFAC

None of the Company, any Subsidiary, any Fund, or, to the Company's Knowledge, any trustee, director, officer, Affiliate, agent, employee or other Person acting on behalf of the Company, a Subsidiary, a Fund, nor any Client, is a Person that is: (a) the subject of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"); or (b) located, organized or resident in a country or territory that is the subject of any U.S. sanctions administered by OFAC. The Company, its Subsidiaries, the Funds have not, for the past five years, knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person or in any country or territory that, at the time of the dealing or transaction, was/is subject to any U.S. sanctions administered by OFAC.

4.33 Brokers

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of the Company.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller, solely regarding itself, represents and warrants to the Parent that the statements contained in this Article V are true and correct as of the date hereof.

5.1 Capacity

Such Seller has the capacity, to enter into this Agreement and the Ancillary Agreements to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by such Seller, and (assuming due authorization, execution and delivery by the other Parties hereto) this Agreement constitutes a legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity. When each Ancillary Agreement to which such Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Agreement will constitute a legal and binding obligation of each Seller enforceable against it in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

5.2 No Conflicts; Consents

- (a) The execution, delivery and performance by such Seller of this Agreement and the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:
 - (i) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Seller; or
 - (ii) require the consent, notice or other action by any Person under any Contract to which such Seller is a party.
- (b) No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to such Seller in connection with the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

5.3 Title to the Interests

Such Seller is the legal and beneficial owner of the number of Interests to be canceled under the Merger, and has good and marketable title to such Interests, free and clear of any Encumbrance other than any statutory lien or Encumbrances created by this Agreement. If such Seller is a Contractual Equity Interestholder, such Seller is the sole legal and beneficial owner of the Contractual Equity Interests cancelled pursuant to this Agreement.

5.4 Securities Law Matters

Such Seller understands that the Consideration Shares have not been registered under the U.S. Securities Act or the securities laws of any state of the United States, and will be issued in reliance on exemptions from the registration requirements of the U.S. Securities Act and applicable state securities laws. Each of the Sellers also understands that the Consideration Shares are being issued pursuant to exemptions from registration contained in the U.S. Securities Act including those based in part upon the representations of Seller contained in this Section 5.4. Such Seller represents that:

- (a) Seller is resident in the United States and is an “accredited investor” as such term is defined in Rule 501(a) of Regulation D promulgated under the U.S. Securities Act;
- (b) if requested by Parent, Seller will execute and deliver to Parent such customary questionnaires affirming the statement contained in Section 5.4(a) and the information set forth therein is true and correct in all respects;
- (c) Seller has substantial experience in evaluating and investing in private placement transactions so that Seller is capable of evaluating the merits and risks of its investment in the Parent and has the capacity to protect its own interests. The Seller must bear the economic risk of this investment indefinitely unless the Consideration Shares are registered pursuant to the U.S. Securities Act, or an exemption from registration is available;
- (d) Seller understands that Parent has no present intention of registering the Consideration Shares under the U.S. Securities Act or under the securities laws of any state of the United States;
- (e) Seller understands that there is no assurance that any exemption from registration under the U.S. Securities Act or under the securities laws of any state of the United States will be available for any resale of the Consideration Shares and that, even if available, such exemption may not allow the Seller to transfer the Consideration Shares, under the circumstances, in the amounts or at the times the Seller might propose;
- (f) Seller is acquiring the Consideration Shares for Seller’s own account for investment only, and not with a view towards their distribution;
- (g) Seller represents that by reason of the Seller’s business or financial experience, the Seller has the capacity to protect its own interest in connection with the

transactions contemplated in this Agreement. Further, the Seller is not aware of any general solicitation or publication of any advertisement in connection with the transactions contemplated in this Agreement;

- (h) Seller has had access to such information concerning Parent as the Seller has considered necessary or appropriate in connection with the Seller's investment decision to acquire the Consideration Shares, including access to public filings available on the Internet at www.sedar.com
- (i) the Consideration Shares will be "restricted securities" pursuant to Rule 144 promulgated under the U.S. Securities Act, and Seller may be required to be held indefinitely thereunder unless they are subsequently registered under the U.S. Securities Act or an exemption from such registration is available;
- (j) Seller acknowledges and agrees that, if such Seller decides to offer, sell or otherwise transfer the Consideration Shares, then such Seller must not offer, sell or otherwise transfer such securities directly or indirectly, unless such offer, sale or other transfer occurs in a transaction that does not require registration under the U.S. Securities Act or any applicable state securities laws or regulations governing the offer and sale of securities and, if reasonably requested by Parent, an opinion of counsel to Parent or to such Seller that such registration is not required; and
- (k) any certificates representing the Consideration Shares may have endorsed thereon a legend in substantially the following form (in addition to any other legend which may be required by other agreements between the parties hereto or by any applicable blue sky laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY ACQUIRING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE COMPANY THAT SUCH SECURITIES MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY; (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S PROMULGATED UNDER THE U.S. SECURITIES ACT; (C) IN ACCORDANCE WITH THE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS; OR (D) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS, AND, IN THE CASE OF CLAUSE (C) OR (D), THE HOLDER FURNISHES TO THE COMPANY AN OPINION OF COUNSEL OF RECOGNIZED STANDING INFORM AND SUBSTANCE SATISFACTORY TO THE COMPANY TO SUCH EFFECT. THE PRESENCE OF THIS LEGEND MAY IMPAIR THE ABILITY OF THE

HOLDER HEREOF TO EFFECT “GOOD DELIVERY” OF THE SECURITIES REPRESENTED HEREBY ON A CANADIAN STOCK EXCHANGE.

provided, that if such Consideration Shares are being sold outside the United States in compliance with the requirements of Rule 904 of Regulation S promulgated under the U.S. Securities Act, the legend set forth above may be removed by providing an executed declaration to the registrar and transfer agent of Parent, in substantially the form as Parent may prescribe from time to time and, if requested by Parent or the transfer agent, an opinion of counsel of recognized standing in form and substance satisfactory to Parent and the transfer agent to the effect that such sale is being made in compliance with Rule 904 of Regulation S promulgated under the U.S. Securities Act.

5.5 Brokers

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of the Seller.

5.6 Legal Proceedings

There are no Actions pending or, to such Seller's knowledge, threatened against or such Seller or any Affiliate of such Seller that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF THE PARENT AND SUBCO

The Parent and Subco, jointly and severally, represent and warrant to the Company and to the Sellers that the statements contained in this Article VI are true and correct as of the date hereof.

6.1 Organization of the Parent and Subco

The Parent is a corporation duly incorporated under the laws of Canada. Subco is a corporation duly incorporated under the laws of the State of Delaware.

6.2 Due Authority

The Parent and Subco each has full power and authority to enter into this Agreement and the Ancillary Agreements to which each is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Parent and Subco of this Agreement and any Ancillary Agreement to which each is a party, the performance by each of its obligations hereunder and thereunder and the consummation by each of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Parent or Subco, as applicable. This Agreement has been duly executed and delivered by the Parent and Subco, and (assuming due

authorization, execution and delivery by the other Parties hereto) this Agreement constitutes a legal, valid and binding obligation of the Parent and Subco enforceable against the Parent and Subco in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity. When each Ancillary Agreement to which the Parent or Subco is or will be a party has been duly executed and delivered by the Parent or Subco, as applicable (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Agreement will constitute a legal and binding obligation of the Parent or Subco, as applicable, enforceable against Parent or Subco, as applicable, in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

6.3 No Conflicts; Consents

- (a) The execution, delivery and performance by the Parent and Subco of this Agreement and the Ancillary Agreements to which each is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:
 - (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Parent or Subco;
 - (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Parent or Subco; or
 - (iii) require the consent, notice or other action by any Person under any Contract to which the Parent or Subco is a party.
- (b) Except for the TSX Approval and the filing of the Certificates of Merger, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Parent or Subco in connection with the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

6.4 Reporting Issuer

The Parent is a "reporting issuer" in all provinces and territories of Canada. The Parent Shares are listed and posted for trading on the TSX. The Parent has not taken any action to cease to be a reporting issuer in any province or territory of Canada nor has the Parent received notification from any Governmental Authority seeking to revoke the reporting issuer status of the Parent.

6.5 Consideration Shares

The Consideration Shares will, when issued, be duly authorized and validly issued as fully paid non-assessable securities in the capital of the Parent, free from any Encumbrances, other than under applicable securities Laws.

6.6 Brokers

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or any Ancillary Agreement based upon arrangements made by or on behalf of the Parent.

6.7 Legal Proceedings

There are no Actions pending or, to the Parent's knowledge, threatened against or by the Parent, Subco or any Affiliate of the Parent that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

ARTICLE VII COVENANTS

7.1 Conduct of Business

From the date hereof until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by the Parent, the Company shall use reasonable efforts, and shall cause each of its Subsidiaries engaged in the Business to use reasonable efforts to, conduct the Business in the ordinary course of business consistent with past practice and, without limiting the generality of the foregoing, shall:

- (a) not materially change any method of accounting or accounting practice of the Company, except as required by Cash Accounting;
- (b) pay the Liabilities, Taxes, accounts payable and other obligations of the Company when due and in a manner consistent with past practice;
- (c) use reasonable efforts to maintain all Permits in good order; and
- (d) use reasonable efforts to collect accounts receivable in a manner and at frequencies consistent with past practice.

7.2 Regulatory Approvals

As soon as reasonably practicable after the date hereof, the Parent, Subco and the Company shall make all notifications, filings, applications and submissions with any Governmental Authority required or advisable, and shall use its commercially reasonable efforts to obtain and maintain the Regulatory Approvals.

7.3 Filing and Consents

- (a) As promptly as practicable after the date hereof, and in any event within the applicable time period prescribed by Law, the Company shall, and Sellers' Representative shall cause the Company to, make all filings and applications and to give all notifications required to be made or given by them under Law in

connection with the transactions contemplated hereby. The Sellers' Representative shall, and shall cause the Company to cooperate with the Parent and their respective Representatives, with respect to all filings, applications, and notifications that the Parent elects or is required to make by Law in connection with the transactions contemplated herein, including the TSX Approval.

- (b) The Company shall, and Sellers' Representative shall cause the Company to, use commercially reasonable efforts to obtain each applicable Client Consent; provided, however, the Company will not amend or revise any Investment Advisory Agreement or reduce or waive any fee payable under any Investment Advisory Agreement or offer or promise to any Client any reduced fee or other amendment, in connection with obtaining such Client Consents or otherwise in connection with the transactions contemplated by this Agreement, in each case without the prior written consent of the Parent. Without limiting the foregoing, with respect to each Investment Advisory Agreement for which the consent of a Client to the deemed assignment of such Investment Advisory Agreement as a result of the transactions contemplated by this Agreement is required by applicable Law and/or by the terms of such Investment Advisory Agreement, the Company and each of its Subsidiaries has, sent a written notice informing such Clients of the transactions contemplated by this Agreement and requesting written consent to the deemed assignment of such Client's Investment Advisory Agreement (and, to the extent permitted by applicable Law and not prohibited by the terms of such Investment Advisory Agreement, providing for approval of such deemed assignment by way of so-called "negative consent"). Parent shall be provided a reasonable opportunity to review and comment upon all disclosure, notice or consent materials to be provided by the Company to any Client, including any limited partner or other investor in any Fund, in connection with the transactions contemplated by this Agreement and all such disclosure, notice or consent materials shall be in form and substance reasonably satisfactory to Parent. The Company shall promptly upon receipt provide Parent with copies of any and all correspondence (other than any non-material correspondence, informal inquires or similar communications) between such parties and the Clients, including limited partner or other investors in any Fund or members or representatives or counsel of any of the foregoing relating to the transactions contemplated by this Agreement, and shall otherwise keep Parent reasonably informed in a timely manner of any material developments involving the obtaining of Client Consents.
- (c) With respect to each New Client, notwithstanding the Company's standard form investment advisory agreement (and the ability to otherwise utilize the negative consent process), the Company shall, at the time such New Client executes its Investment Advisory Agreement, inform such New Client of the transactions contemplated by this Agreement and obtain the affirmative consent to the assignment of such New Client's Investment Advisory Agreement that will result from the transactions contemplated by this Agreement.

7.4 Access and Diligence Materials

From the date hereof until the Closing Date, the Company will provide to the Parent and its Representatives, to the extent consistent with prevailing orders from any Governmental Authority and health and safety policies related to COVID-19, reasonable access to its facilities, properties, personnel, books, records, documents and information to allow the other to conduct due diligence.

7.5 Notification of Change

Each Party agrees that it will notify the other Parties promptly in writing of the occurrence, or failure to occur, at any time from the date of this Agreement until the Closing, of any event or state of facts which occurrence or failure to occur which, acting in good faith, it believes would be reasonably likely to:

- (a) cause any of that Party's representations or warranties in this Agreement to be inaccurate (in any material respect, if the representation or warranty is not already subject to a materiality qualifier) at the Closing (except for those representations and warranties made as of a specified date);
- (b) result in the failure to comply with any covenant to be complied with by that Party before the Closing; or
- (c) result in the failure to satisfy any of the conditions precedent in favour of any other Party,

provided that no such notification will affect the representations or warranties of the Parties or the conditions to the obligations of the Parties in this Agreement.

7.6 Non-Competition.

For a period of two (2) years commencing on the Closing Date, except as authorized or requested by the Parent (which authorization shall be deemed to include each of the Management Seller's relationship with the Parent (including any subsidiaries thereto), Company, its Subsidiaries, the Funds, and the Known Appointments), the Management Sellers shall not, and shall cause each of their Affiliates not to, directly or indirectly, in any manner whatsoever including, either individually, or in partnership, jointly or in conjunction with any other Person, or as employee, employer, principal, agent, trustee, consultant, contractor, manager, officer, shareholder or lender:

- (a) carry on or be engaged in any business;
- (b) have a financial or other interest (including an interest by way of royalty or other compensation arrangements) in or in respect of the business of any Person which carries on a business;
- (c) advise, manage, lend money to or guarantee the debts or obligations of any Person which carries on a business;

- (d) permit their name to be used or employed by any Person carrying on, engaged in a business;
- (e) canvass or solicit the business of (or procure or assist the canvassing or soliciting of the business of) any Client;
- (f) accept (or procure or assist the acceptance of) any business from any Client;
- (g) supply (or procure or assist the supply of) any services to any Client;
- (h) unless otherwise approved in writing by the Parent, employ, offer employment to or solicit the employment or engagement of or otherwise entice away from the employment of the Company any individual who is employed by the Company or ceased employment with the Company for one hundred and twenty (120) days, whether or not such individual would commit any breach of his contract or terms of employment by leaving the employ of the Company; or
- (i) procure or assist any Person to employ, offer employment or solicit the employment or engagement of any such individual;

in each case in or with respect to (as applicable) the same business as, or a competing business to (i.e., that is the same or a substantially similar business) to the Business (or a material part of the Business) in North America. Notwithstanding the above, nothing in this Agreement shall prevent a Management Seller from owning not more than one percent (1%) of any class of securities of an entity that are listed on a recognized securities exchange in the United States or Canada which carries on a business which is the same as or which competes with the Business of the Company or any of its Subsidiaries.

The Parties agree that (i) no proceeds shall be received or receivable by Management Sellers in connection with the transaction contemplated in this Agreement as consideration for granting any restrictive covenant in this Section 7.6, and (ii) all such covenants are being granted to maintain or preserve the fair market value of the Interests.

7.7 Confidentiality

- (a) Following the Closing Date and for a period of three (3) years thereafter, each Seller will, and will cause its Affiliates to, subject to clause (b) below, keep confidential prior to and after the Closing, and not disclose to any Person, or use, any Confidential Information. For purposes of this Agreement, “**Confidential Information**” means any non-public information to the extent relating to the Business or the Company and its Subsidiaries, other than information which is or becomes generally available to the public other than as a result of a disclosure or other action (or failure to act) by a Seller or any of its Affiliates. However, “**Confidential Information**” shall not include: (A) information that becomes publicly available not as the result of the violation by the Sellers of their obligations hereunder, (B) information already known to the receiving party prior to distribution by the Parent, (C) is received from a third party without violation

of a confidentiality obligation to the Parent, (D) is independently developed, or (E) subject to Section 7.7(b), as required connection with a request from a Governmental Authority, regulator or by process of law.

- (b) In the event that a Seller or any of its Affiliates is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demand or similar process), in connection with any proceeding, to disclose any Confidential Information, such Seller will give Parent prompt written notice of such request or requirement so that Parent may seek an appropriate protective order or other remedy or waive compliance with the provisions of Section 7.7(a), and such Seller will reasonably cooperate with Parent to obtain such protective order upon Parent's request and at Parent's expense. If, in the absence of a protective order or the receipt of a waiver hereunder, such Seller or any of its Affiliates is nonetheless requested or required to disclose Confidential Information to or at the direction of any Governmental Authority, such Seller and its Affiliates may disclose such Confidential Information to or at the direction of such Governmental Authority only after first notifying Parent in writing of such disclosure and, upon Parent's request, after using its commercially reasonable efforts (at Parent's expense) to obtain assurances that confidential treatment will be accorded to such information.

7.8 Public Announcements

Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no Party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the Parent (which consent shall not be unreasonably withheld or delayed), and the Parent, the Company and the Sellers' Representative shall cooperate as to the timing and contents of any such announcement.

7.9 Tax Matters

- (a) Preparation of Tax Returns
 - (i) Sellers' Representative shall prepare (or cause the Company to prepare), at Sellers' sole expense, all Tax Returns that are required to be filed by, or on behalf, of the Company in respect of any Pre-Closing Tax Period (other than a Straddle Period), on a basis consistent with those prepared for prior taxable periods unless a different treatment of any item is required by applicable Law.
 - (ii) Parent shall prepare and file (or cause the Company to prepare and file), at Parent's sole expense (except as provided in subclause (D) of this paragraph), all Tax Returns that relate to the Company for any Straddle Period; provided that (A) such Tax Returns shall be prepared on a basis consistent with those prepared for prior taxable periods unless a different treatment of any item is required by Law, (B) Parent shall (x) provide Sellers' Representative with a copy of each completed Tax Returns at least

twenty (20) days prior to the due date (taking into account extensions validly obtained) for filing of such Tax Returns and (y) take into account any reasonable comments provided by the Sellers' Representative received at least five (5) days prior to the due date (taking into account extensions validly obtained) for filing of such Tax Returns, (C) Parent shall timely file (or cause the Company to timely file) any such Tax Returns and (D) Sellers' Representative shall promptly reimburse Parent for fifty percent (50%) of any reasonable costs, expenses or fees incurred by Parent or any of its Affiliates in preparing Tax Returns for Straddle Periods.

- (b) **Tax Cooperation and Exchange of Information.** The Parties shall provide each other with such cooperation and information as any of them reasonably may request of the other Parties (and Parent shall cause the Company to provide such cooperation and information) in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or participating in or conducting any Tax Claim. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with related work papers and documents relating to rulings or other determinations by taxing authorities. The Parties shall make themselves (and their respective employees, if applicable) reasonably available on a mutually convenient basis to provide explanations of any documents or information provided under this Section 7.9(b). Notwithstanding anything to the contrary in this Agreement, each of the Parties shall retain all Tax Returns, work papers and all material records or other documents in its possession relating to Tax matters of the Company for any taxable period that includes the Closing Date and for all prior taxable periods until the later of (i) the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions or (ii) six (6) years following the due date (without extension) for such Tax Returns. After such time, before any Party disposes of any such documents in its possession, the other Parties shall be given an opportunity, after ninety (90) days' prior written notice, to remove and retain all or any part of such documents as such other Parties may select (at such selecting Party's expense). Any information obtained under this Section 7.9(b) shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting a Tax Claim.
- (c) **Transfer Taxes.** Any Transfer Taxes imposed upon, or payable or collectible or incurred in connection with, this Agreement or the transactions contemplated hereby shall be borne equally by the Parent and the Sellers, in the case of each Seller, based on their *pro rata* allocation of the Total Consideration. Each Party shall be pay such Transfer Taxes to the appropriate Governmental Authority on a timely basis. The Parties agree to cooperate in the execution and delivery of all instruments and certificates necessary to enable the appropriate Party to comply with any pre-Closing filing requirements.

7.10 Further Assurances

Following the Closing, each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE VIII WAIVER OF RIGHTS UNDER THE LLC AGREEMENT AND RIGHTS OF APPRAISAL

8.1 Irrevocable Waiver of Rights

Each of the Sellers hereby irrevocably waives all rights they may each have: (a) under the LLC Agreement or the Letter Agreement that may have been triggered by the transactions contemplated in this Agreement and any Ancillary Agreement; (b) any requirements of strict compliance to the LLC Agreement or the Letter Agreement to consummate the transactions contemplated by this Agreement and any Ancillary Agreement; and (c) to dissent to the Merger and related rights of appraisal, as may be provided under the Merger Laws or other applicable Law.

ARTICLE IX CONDITIONS PRECEDENT AND THE OBLIGATIONS OF THE PARENT

The obligation of the Parent and Subco to consummate the Merger and to perform their respective other obligations hereunder to be performed on or after the Closing shall be subject to the fulfillment, on or prior to the Closing Date, unless otherwise waived in writing by the Parent, of each of the following conditions:

9.1 Representations and Warranties

As of the date hereof and as of the Closing Date as if made on and as of such date (or, to the extent any such representations and warranties, by their terms, are made expressly as of the date hereof or another date, as of such other date), (a) the Fundamental Representations shall be true and correct in all respects, and (b) all other representations and warranties of (i) the Company set forth in Article IV, and (ii) the Sellers set forth in Article V shall be true and correct in all material respects.

9.2 Performance of Covenants

The Sellers and the Company shall have performed and complied with in all material respects all of their covenants and agreements contained in this Agreement to be performed on or prior to the Closing Date.

9.3 Orders and Law

There shall not be in effect on the Closing Date any Law, Action or threatened Action, challenging, restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated hereby.

9.4 Governmental Consents, Approvals and Notices

The Regulatory Approvals, consents, non-objections and approvals of, filings with and notices and applications to the Governmental Authorities listed in Section 9.4 of the Disclosure Schedules shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods listed in Section 9.4 of the Disclosure Schedules imposed by any Governmental Authority necessary for the consummation of the transactions contemplated hereby shall have occurred.

9.5 TSX Approval

The Parent shall have received the TSX Approval from the TSX.

9.6 Fairness Opinion

The Financial Advisor shall have confirmed in writing that the Fairness Opinion provided on April 28, 2020 remains valid as at the Closing Date, taking into account any information discovered and events that transpired during the interim period.

9.7 Third Party Consents

The consents and approvals listed in Section 9.7 of the Disclosure Schedules shall have been provided, obtained or received, as applicable, on terms that are satisfactory to the Parent, acting reasonably, and evidence of the same shall have been delivered to the Parent.

9.8 Agreements

- (a) The Sellers' Representative and the Escrow Agent shall have executed and delivered the Escrow Agreement to the Parent.
- (b) Each Management Seller shall have executed and delivered his Employment Agreement to the Parent.

9.9 Officer's Certificate

Each of the Company and the Sellers' Representative shall have delivered to the Parent a certificate dated as of the Closing Date and executed by a duly authorized officer of the Company or Sellers' Representative, as applicable, in a form reasonably acceptable to the Parent, confirming the matters applicable to the Company and the Sellers in Section 9.1 and Section 9.2.

9.10 Absence of MAE

Since the date of this Agreement, there shall not have been or occurred a Material Adverse Effect.

ARTICLE X

CONDITIONS PRECEDENT AND THE OBLIGATIONS OF THE SELLERS

The obligation of the Company to consummate the Merger and for the Sellers and the Company to perform their respective other obligations hereunder to be performed on or after the Closing shall be subject to the fulfillment, on or prior to the Closing Date, unless otherwise waived in writing by the Sellers' Representative, of each of the following conditions:

10.1 Representations and Warranties

The representations and warranties of the Parent and Subco set forth in Article VI shall be true and correct in all material respects (without giving effect to any materiality qualifications contained therein) as of the date hereof and as of the Closing Date as if made on and as of such date (or, to the extent that any such representations and warranties, by their terms, are made expressly as of the date hereof or another date, as of such other date).

10.2 Performance of Covenants

The Parent and Subco shall have performed and complied with in all material respects all of their covenants and agreements contained in this Agreement to be performed on or prior to the Closing Date.

10.3 Orders and Law

There shall not be in effect on the Closing Date any Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated hereby.

10.4 Governmental Consents, Approvals and Notices

The consents, non-objections and approvals of, filings with and notices and applications to the Governmental Authorities listed in of the Section 9.4 of the Disclosure Schedules shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods listed in Section 9.4 of the Disclosure Schedules imposed by any Governmental Authority necessary for the consummation of the transactions contemplated hereby shall have occurred.

10.5 TSX Approval

The Parent shall have received the TSX Approval from the TSX.

10.6 Agreements

- (a) The Parent and the Escrow Agent shall have executed and delivered the Escrow Agreement to the Sellers' Representative.
- (b) The Parent shall have executed and delivered Employment Agreements to the Management Sellers.

10.7 Officer's Certificate

The Parent shall have delivered to the Sellers' Representative a certificate dated as of the Closing Date and executed by a duly authorized officer of the Parent and Subco, in a form reasonably acceptable to the Sellers' Representative, confirming the matters applicable to the Parent and Subco in Section 10.1 and Section 10.2.

ARTICLE XI INDEMNIFICATION

11.1 Survival

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the date hereof, provided that:

- (a) the representations and warranties in Section 4.1, Section 4.2, Section 4.3, Section 5.1, Section 5.2 and Section 5.3 (collectively, the **"Fundamental Representations"**) shall survive indefinitely, and
- (b) the representations and warranties Section 4.26 shall survive for a period of thirty-six (36) months following Closing.

All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved. Notwithstanding anything to the contrary, nothing herein shall limit in any way any Party's rights and remedies in case of Fraud.

11.2 Joint and Several Indemnification By Management Sellers

Subject to the other terms and conditions of this Article IX, the Management Sellers, jointly and severally, shall indemnify and defend the Parent and its Affiliates and Representatives (collectively, the **"Parent Indemnitees"**) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Parent Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company or any of its Subsidiaries pursuant to this Agreement;
- (b) not in limitation of Section 11.2(a) and without regard to the fact that any one or more of the items referred to in this Section 11.2(b) may be disclosed by the Company in the Disclosure Schedules or in any documents included or referred to

therein or may be otherwise known to the Parent on the date hereof, (i) any and all Taxes (or the non-payment thereof) of the Sellers; (ii) any and all Taxes (or the non-payment thereof) of the Company and/or its Subsidiaries for all taxable periods ending on or prior to the date hereof and the portion through and including the date hereof for any Straddle Period (each, a “**Pre-Closing Tax Period**”); (iii) any and all Taxes imposed on the Company or its Subsidiaries, as a transferee or successor, by Contract or pursuant to any Law, rule or regulation, which Taxes relate to the Company’s or its Subsidiaries’ income or operations, or to an event or transaction occurring on or prior to the date hereof, including any Tax imposed on the Company or its Subsidiaries under Section 6221 of the Code; and (iv) any and all Taxes of any member of an affiliated, combined, consolidated, or unitary group of which the Company or any of its Subsidiaries is or was a member on or prior to the date hereof, including pursuant to Treasury Regulation Section 1.1502-6 (or any similar state, local, or non-U.S. Law). In the case of Taxes that are attributable to a Straddle Period, the portion of any Tax that is allocable to the Pre-Closing Tax Period: (x) in the case of Taxes that are imposed on a periodic basis (such as real or personal property Taxes), will be deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period through the date hereof and the denominator of which is the number of days in the entire taxable period; and (y) in the case of all other Taxes, will be deemed equal to the amount which would be payable if the taxable period ended on the date hereof;

- (c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company pursuant to this Agreement, the Ancillary Agreements or any certificate or instrument delivered by or on behalf of the Company or any of its Subsidiaries pursuant to this Agreement;
- (d) any Losses arising in connection with claims made by former and current unitholders, warrant holders, option holders or any other holders of securities of the Company or its Subsidiaries or otherwise as a result of having sold, or the Company or its Subsidiaries having redeemed or repurchased, such former unitholders’ membership units, warrants, options, or such other securities of the Company or its Subsidiaries; and/or
- (e) any Losses arising in connection with claims made by former and current Clients or any Governmental Authority pertaining to the conduct of the Company prior to the Closing Date with respect to its compliance with its fiduciary obligations and/or U.S. Securities Laws; and/or
- (f) any Losses incurred in respect of, arising out of or relating to the Designated Matters.

11.3 Several Indemnification By Sellers

Subject to the other terms and conditions of this Article IX, each Seller shall severally (and not jointly) indemnify and defend the Parent Indemnitees against, and shall hold each of them

harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Parent Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of such Seller contained in this Agreement; and/or
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by such Seller pursuant to this Agreement.

11.4 Indemnification By Parent

Subject to the other terms and conditions of this Article IX, the Parent shall indemnify and defend the Sellers, the Company and their respective Affiliates and Representatives (collectively, the “**Company Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Company Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of the Parent or Subco contained in this Agreement; and/or
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Parent or Subco pursuant to this Agreement.

11.5 Indemnification Procedures

The Party making a claim under this Article IX is referred to as the “**Indemnified Party**”, and the Party against whom such claims are asserted under this Article IX is referred to as the “**Indemnifying Party**”, provided that the Sellers’ Representative shall be the sole Party representing the Sellers for any matters relating to this Article IX.

- (a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses or is otherwise prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in,

or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 11.5(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected and paid for by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 11.5(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Sellers' Representative, the Company and the Parent shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

- (b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 11.5(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. The Indemnified Party shall have a right to consent to such settlement, which consent shall not be unreasonably withheld, conditioned or delayed. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 11.5(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

- (c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice and details thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses or is otherwise prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.
- (d) **Tax Claims.**
- (i) If a claim shall be made by any taxing authority, which, if successful, might result in an indemnity payment to an Indemnified Party pursuant to this Article IX, then such Indemnified Party shall give notice to the Indemnifying Party in writing of such claim and of any counterclaim the Indemnified Party proposes to assert within ten (10) Business Days (a “**Tax Claim**”); provided, however, the failure to give such notice shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party has been materially prejudiced as a result of such failure.
- (ii) With respect to any Tax Claim relating to a Pre-Closing Tax Period (other than a Straddle Period), the Sellers’ Representative shall have the right, solely at their own cost and expense, to control all proceedings in connection with such Tax Claim (including selection of counsel). The Parent shall have the right to attend or participate in all proceedings in connection with such Tax Claim and the Sellers’ Representative shall keep the Parent fully updated with the progress of such Tax Claim. Neither the Sellers’ Representative nor the Parent shall, and the Sellers’ Representative and the Parent shall cause each of their respective

Subsidiaries not to, settle any such Tax Claim for a Pre-Closing Tax Period (other than a Straddle Period which is governed by Section 11.5(d)(ii)) without the written consent of the other, which such written consent shall not be unreasonably withheld, delayed or conditioned.

- (iii) With respect to any Tax Claim relating to a Straddle Period, the Parent shall have the option to control all proceedings in connection with such Tax Claim (including selection of counsel), provided that the Sellers' Representative shall have the right to attend or participate in all proceedings in connection with such Tax Claim as it relates to the portion of the Straddle Period ending on the date hereof (solely at its own cost and expense) and the Parent shall keep the Sellers' Representative fully updated with the progress of such Tax Claim as it relates to the portion of the Straddle Period ending on the date hereof. Neither the Sellers' Representative nor the Parent shall settle any such Tax Claim relating to Taxes of the Company or its Subsidiaries for a Straddle Period without the prior written consent of the other, such written consent to be unreasonably withheld, conditioned or delayed.
- (iv) For the avoidance of doubt, the procedures regarding an indemnification for Tax Claims or relating to an alleged breach of a representation in Section 4.26 shall be governed by this Section 11.5(d) and not Sections 11.5(a) through 11.5(c).

11.6 Certain Limitations

The indemnification provided for in Section 11.2, Section 11.3 and Section 11.4 shall be subject to the following limitations:

- (a) The Management Sellers shall not be liable to the Parent Indemnitees for indemnification under Section 11.2(a) unless the aggregate amount of all Losses in respect of indemnification under Section 11.2(a) exceeds \$100,000, in which event the Management Sellers shall be, jointly and severally, liable for all such Losses from the first dollar. The aggregate amount of all Losses for which the Management Sellers shall be liable pursuant to Section 11.2(a) shall not exceed 50% of the Total Consideration actually received by all Sellers pursuant to this Agreement.
- (b) Notwithstanding Section 11.6(a), the aggregate amount of all Losses for which the Management Sellers shall be liable pursuant to Section 11.2(a) with respect to or by reason of any inaccuracy in or breach of any of the Fundamental Representations or any of the representations set forth in Section 4.26, or in connection with Losses arising under or described in Section 11.2(b), shall not exceed 100% of the Total Consideration actually received by all Sellers pursuant to this Agreement.
- (c) The aggregate amount of all Losses for which a Seller shall be liable pursuant to Section 11.3(a) shall not exceed the Total Consideration actually received from

the Parent by such Seller pursuant to this Agreement. Notwithstanding the foregoing, the aggregate amount of all Losses for which each Seller shall be liable pursuant to Section 11.3(a) with respect to or by reason of any inaccuracy in or breach of any of the Fundamental Representations shall not exceed 100% of the Total Consideration actually received by such Seller.

- (d) The aggregate amount of all Losses for which the Parent shall be liable pursuant to Section 11.4(a) shall not exceed the Total Consideration payable by the Parent pursuant to this Agreement.
- (e) Notwithstanding the foregoing, the limitations set forth in Section 11.6(a), Section 11.6(b), Section 11.6(c) and 11.6(d) nothing in this Agreement shall limit any remedy of any Indemnified Party against any Person for Fraud.
- (f) For the purposes of this Section 11.6, in calculating the value of any Parent Shares received as part of the Total Consideration, the cash value attributed to them shall be their closing market price on the day such shares were issued to the indemnifying Seller.

11.7 Satisfaction of Claims

Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article IX, any amounts owing by the Indemnifying Party shall be satisfied within ten (10) Business Days of such final, non-appealable adjudication as follows:

- (a) in the case where the Sellers (or any one of them) are (or is) the Indemnifying Party, by wire transfer of the Sellers' Representative of immediately available funds to an account designated in writing by the Parent Indemnitees of an amount equal to the amount of such Loss; and
- (b) in the case where the Parent is the Indemnifying Party by wire transfer of immediately available funds to an account designated in writing by the Sellers' Representative of an amount equal to the amount of such Loss to the Company Indemnitees, to be allocated rateably among the Indemnified Parties.

11.8 Exclusive Remedy

Subject to Section 2.8, Section 7.6 and Section 7.7, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from Fraud, criminal activity on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article XI. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to

the indemnification provisions set forth in this Article XI. Nothing in this Section 11.8 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's Fraud, criminal or intentional misconduct.

11.9 Right of Set-Off

The Parties agree that the Parent may set off any amount of which it may be entitled under this Article XI against any of the Escrow Shares and/or the Earn-Out Shares that may become released or issuable in the future to the Sellers. In determining the value of the Escrow Shares and Earn-Out Shares for the purposes of this Section 11.8, the Parties shall use the lesser of (i) the closing market price on the TSX of the Parent Shares on the Closing Date; and (ii) the closing market price on the TSX of the Parent Shares on the date where Parent delivers to the Sellers' Representative a written notice that the right of the Parent under this Section 11.8 is exercised. The Parties agree that if the set off right provided to the Parent pursuant to this Section 11.8 is exercised with respect to any Deposited Escrow Shares, any joint direction to be delivered to the Escrow Agent will direct to allocate the Deposited Escrow Shares accordingly.

11.10 Tax Treatment of Indemnification Payments

All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Total Consideration for Tax purposes, unless otherwise required by Law

11.11 Effect of Investigation

The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate. However, the representations, warranties and covenants will be affected by the Disclosure Schedules.

ARTICLE XII MISCELLANEOUS

12.1 Termination

- (a) This Agreement shall be effective from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms.
- (b) This Agreement may be terminated at any time prior to the Closing by:
 - (i) the mutual written agreement of the Parties; or
 - (ii) the Sellers' Representative or the Parent if the Closing did not occur on or prior to the Outside Date, provided that the terminating Party has not acted in bad faith to delay Closing.

- (c) If this Agreement is terminated pursuant to this Section 12.1, this Agreement shall become void and of no further force or effect without liability of any Party (or any shareholder, director, officer, employee, agent, consultant or other Representative of such Party) to any other Party to this Agreement, provided that neither the termination of this Agreement nor anything contained in this Section 12.1 shall relieve any Party from any liability for any breach of this Agreement or Fraud.

12.2 Expenses

Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred by the Party in connection with this Agreement and the transactions contemplated hereby, whether or not the Closing shall have occurred.

12.3 Sellers' Representative

- (a) The Sellers' Representative, on the terms hereafter set out, shall act for the Sellers, and each of them, with respect to the calculations, determinations and negotiations set out in Section 2.8, with respect to the execution of all agreements and documents and the making of all deliveries required to be made by the Sellers under this Agreement, with respect to the waiver of any condition under, and the decision to terminate this Agreement pursuant to Article X, with respect to claims for indemnification made under Article XI by the Parent, with respect to claims by the Sellers against the Parent made under Article XI, with respect to amendments to this Agreement, and with respect to any other decision, consent or waiver to be made by the Sellers under this Agreement or any Ancillary Agreement. In each such case in this Agreement, the Parent shall be entitled to direct all communications through, and rely on decisions made by, the Sellers' Representative. With respect to all such matters, the Sellers' Representative may (i) take any and all actions (including executing and delivering any documents), incurring any costs and expenses for the account of the Sellers and make any and all determinations which may be required or permitted to be taken by the Sellers under this Agreement, (ii) exercise such other rights, power and authority as are authorized, delegated and granted to the Sellers' Representative under this Agreement, (iii) dispute or refrain from disputing any claim made by the Parent under this Agreement, (iv) negotiate and compromise any dispute that may arise under and exercise or refrain from exercising any remedies available under this Agreement, (v) execute any settlement agreement, release or other document with respect to such dispute or remedy, and (vi) exercise such rights, power and authority as are incidental to the foregoing.
- (b) Each of the Sellers acts through the Sellers' Representative with respect to the aforementioned matters and none of the Sellers has the right to act independently with respect to any such matter or to institute or participate in any suit, action or proceeding, now existing or hereafter arising, against or by the Parent with respect to this Agreement, any such right being irrevocably and exclusively with the Sellers' Representative. Notwithstanding any disagreement or dispute among the Sellers or between any of the Sellers and the Sellers' Representative, the Parent

shall be entitled to rely on any and all action taken by the Sellers' Representative under this Agreement, without any liability to, or obligation to inquire of, any of the Sellers.

- (c) The power, rights and authority of the Sellers' Representative, as described in this Agreement, and the indemnification entitlement of the Sellers' Representative from the Sellers, shall be effective until all rights and obligations of the Sellers under this Agreement have terminated, expired or been fully performed. Each of the Sellers shall promptly do, make, execute, deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the Sellers' Representative may require from time to time for the purpose of giving effect to this Section 12.3 and shall use commercially reasonable efforts and take all such steps as may be within its power to implement to their full extent the provisions of this Section 12.3.
- (d) Each of the Sellers shall severally as to it (and not jointly nor jointly and severally) indemnify and hold the Sellers' Representative (including, for greater certainty, the agents and Representatives of the Sellers' Representative) (the "**Sellers' Representative Indemnified Parties**") harmless from and against such Seller's *pro rata* share, of any losses, damages or deficiencies (except as a result from the Sellers' Representative's fraud, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final adjudication) that the Sellers' Representative Indemnified Parties may suffer or incur in connection with any action taken by the Sellers' Representative. Each of the Sellers shall bear its *pro rata* share of such losses, damages or deficiencies. The Sellers' Representative Indemnified Parties shall not be liable to any of the Sellers with respect to any action or omission taken or omitted to be taken by the Sellers' Representative pursuant to this Section 12.3, except in respect of the Sellers' Representative's fraud, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final adjudication. The Sellers' Representative Indemnified Parties shall not be responsible in any manner whatsoever for any failure or inability of the Parent to honor any of the provisions of this Agreement. The Sellers' Representative Indemnified Parties shall be fully protected by the Sellers in acting or relying upon any written notice, direction, request, waiver, consent, receipt or other paper or document which the Sellers' Representative in good faith believes to be genuine and to have been signed or presented by the proper party or parties. The Sellers' Representative Indemnified Parties shall not be liable to the Sellers or the Parent for any error of judgment, or any act done or step taken or omitted in good faith or for any mistake in fact or law, or for anything which it may do or refrain from doing in connection herewith, except for its own fraud, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final adjudication.
- (e) The Sellers' Representative may seek the advice of legal counsel, engage experts or otherwise incur expenses in the event of any dispute or question as to the construction of any of the provisions of this Agreement, or its duties hereunder, and the Sellers' Representative Indemnified Parties shall incur no liability to the

Sellers with respect to any action taken, omitted or suffered by it in good faith in accordance with the opinion of such counsel or advice of such expert.

- (f) Each Seller shall severally as to it (and not jointly nor jointly and severally) reimburse or otherwise hold the Sellers' Representative Indemnified Parties harmless from and against such Seller's *pro rata* share of any and all costs and expenses incurred by the Sellers' Representative in connection with this Agreement and the transactions contemplated hereby, including attorneys' fees or fees of other experts and, in addition to any and all other remedies available, the Sellers' Representative Indemnified Parties shall have the right to direct that any amounts due to the Sellers under this Agreement be paid to the Sellers' Representative Indemnified Parties to satisfy such costs and expenses.
- (g) By execution and delivery of this Agreement by such Seller or his or her representative, agent or attorney, each of the Sellers hereby irrevocably constitutes and appoints the Sellers' Representative as the true and lawful agent and attorney-in-fact of such Seller, which appointment is coupled with an interest, with full authority and power of substitution, to act in the name, place and stead of such Seller with respect to all powers and rights in or relating to this Agreement or relating to the subject matter of this Agreement, including to (i) amend, waive or terminate this Agreement in accordance with the terms hereof, (ii) receive or deliver any and all notices to be delivered to or by any of the Sellers under this Agreement, (iii) receive, hold and deliver to the Parent share and unit certificates and any other documents (including stock/unit powers or other instruments of transfer relating thereto), and (iv) negotiate, execute, acknowledge, deliver, record and file, and amend, waive, terminate and take all actions contemplated by, all Ancillary Agreements (including the Escrow Agreement), certificates and documents which the Sellers' Representative deems necessary or appropriate in its sole discretion in connection with the consummation of the transactions contemplated hereby. The Parent and each of the Sellers hereby acknowledges that the Sellers' Representative, with respect to the matters set out in this Section 12.3, will not be acting in such Person's individual capacity pursuant to the terms of this Agreement, but solely in its capacity as the Sellers' Representative (and, accordingly, as a representative of the Sellers). The Parent and each of the Sellers hereby agree that the Sellers' Representative will not be liable to that party for any action taken or omitted in good faith in its capacity as the Sellers' Representative.
- (h) Notwithstanding any other provisions hereof, the Sellers' Representative shall not have the right acting in such capacity hereunder to take any actions or make any decisions that (i) in the case of a claim for which a Seller's liability under this Agreement is limited to its respective *pro rata* share, increase such Seller's relative liability, or (ii) have the effect of treating a Seller differently from any or all of the other Sellers.

12.4 Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by an internationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 12.4):

If to the Company, the Sellers:

Philip Mittleman
105 Maxess Road, Suite 207,
Melville, NY 11747
Facsimile: [REDACTED]
E-mail: [REDACTED]
Attention: Philip Mittleman

with a copy to:

Kleinberg, Kaplan, Wolff & Cohen, P.C.
500 Fifth Avenue
New York, New York
10110
Facsimile: [REDACTED]
E-mail: [REDACTED]
Attention: Eric Wagner and Christopher Davis

If to the Parent or Subco:

Aimia Inc.
2901-777 Bay Street, PO Box 118
Toronto, Ontario
M5G 2C8

Facsimile: [REDACTED]
E-mail: [REDACTED]
Attention: Edouard Dong Vo-Quang

with a copy to:

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Facsimile: [REDACTED]
Email: [REDACTED]
Attention: Stephen Pincus and Hari Marcovici

12.5 Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12.6 Entire Agreement

This Agreement and the Ancillary Agreements constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements (including, for the avoidance of doubt, the Prior Agreement), both written and oral, with respect to such subject matter (provided that the foregoing shall not limit in any respect any claim by any Person for Fraud, or any right of any Person to any remedy in respect thereof). In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Agreements, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

12.7 Successors and Assigns

- (a) This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Except as set forth below, no Party may assign its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning Party of any of its obligations hereunder.
- (b) The Parent may, with the prior written consent of the Sellers' Representative, which consent may not be unreasonably withheld or delayed, assign and transfer its rights and benefits under this Agreement to any of its wholly-owned subsidiaries, if such subsidiary delivers to the Sellers' Representative an instrument in writing that it is bound by and shall perform the obligations of the Parent under this Agreement as if it were an original signatory hereto; provided that no such sale, assignment or transfer shall release the Parent from any of its obligations hereunder.

12.8 No Third-Party Beneficiaries

Except as provided in Article IX, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

12.9 Amendment and Modification; Waiver

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12.10 Governing Law

This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the Province of Ontario and the laws of Canada applicable therein and shall in all respects be governed, construed, applied and enforced in accordance with said laws. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario.

12.11 Waiver of Jury Trial

EACH PARTY HERETO HEREBY IRREVOCABLY 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 ANY OTHER ANCILLARY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND ANY ANCILLARY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

12.12 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this

Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MITTLEMAN BROTHERS, LLC

Per: "signed"
Name: Philip Mittleman
Title: CEO
& President

AIMIA INC.

Per: "signed"
Name: Charles Frischer
Title: Chairman of the Board of Directors

MITTLEMAN BROTHERS, INC.

Per: "signed"
Name: Edouard Vo-Quang
Title: Corporate Secretary

PETER & KAREN LOCKE LIVING TRUST

"signed"
Name: Peter Locke and Karen Locke
Title: in their capacity as trustees

"signed"
CHRISTOPHER P. MITTLEMAN

"signed"
**PHILIP C. MITTLEMAN, both in his
personal capacity and as the Sellers'
Representative**

"signed"
DAVID J. MITTLEMAN

"signed"
DEXTER LOCKE

"signed"
LAWRENCE ABRAMSON

"signed"
MARC BLANK

"signed"
PATRICK HAYES

"signed"
TAYLOR LOCKE

"signed"
EVAN R. NEWMAN

"signed"
JESSICA CLINGO

"signed"
STEPHEN G. BONDI

"signed"
ROBERT DELEONARIDS

SCHEDULE A

SELLERS

NAME	% OF INTERESTS HELD AND CANCELLED UNDER MERGER ⁽¹⁾	CONSIDERATION (CASH)	INITIAL SHARE CONSIDERATION	PRO FORMA EARN-OUT SHARES	PRO FORMA ESCROW SHARES
Christopher P. Mittleman	29.1032%	\$1,349,753.60	438,569	291,032	485,053
Philip C. Mittleman	25.8153%	\$1,197,265.02	389,021	258,153	430,255
David J. Mittleman	23.9364%	\$1,110,128.73	360,709	239,364	398,940
Dexter Locke	0.7046%	\$32,676.12	10,617	7,046	11,743
Lawrence Abramson	4.6482%	\$215,573.51	70,045	46,482	77,469
Marc Blank	0.4534%	\$21,028.31	6,833	4,534	7,557
Patrick Hayes	1.3602%	\$63,084.93	20,498	13,602	22,670
Peter & Karen Locke Living Trust	6.3084%	\$292,573.57	95,064	63,084	105,141
Robert Deleonarids	0.9068%	\$42,056.62	13,665	9,068	15,114
Taylor Locke	0.7046%	\$32,676.12	10,617	7,046	11,743
Evan R. Newman	4.8589%	\$225,347.65	73,221	48,589	80,982 ⁽²⁾
Jessica Clingo	0.7%	\$32,464.73	10,549	7,000	11,667 ⁽²⁾
Stephen G. Bondi	0.5%	\$23,189.09	7,535	5,000	8,333 ⁽²⁾
Total:	100%	\$4,637,818	1,506,943	1,000,000	1,666,667

(1) Includes Contractual Equity Interests

(2) Forms part of the Excluded Escrow Shares