

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

**FORM 8-K**

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported): June 19, 2020

**CREATIVE REALITIES, INC.**

(Exact name of registrant as specified in its charter)

**Minnesota**

(State or other jurisdiction  
of incorporation)

**001-33169**

(Commission File Number)

**41-1967918**

(IRS Employer  
Identification No.)

**13100 Magisterial Drive, Suite 100, Louisville, KY**

(Address of principal executive offices)

**40223**

(Zip Code)

**(502) 791-8800**

(Registrant's telephone number, including area code)

Not applicable

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

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

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

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

Emerging growth company

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	CREX	The Nasdaq Stock Market LLC
Warrants to purchase Common Stock	CREXW	The Nasdaq Stock Market LLC

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

### *Master Distributor Agreement*

On June 19, 2020 (the “Effective Date”), Creative Realities, Inc. (the “Company”) entered into a Master Distribution Agreement (the “Distribution Agreement”) with InReality, LLC (“InReality”), pursuant to which the Company will serve as the exclusive master distributor of InReality’s ThermalMirror product (the “Product”) in the United States and Canada. The initial term of the Distribution Agreement is twelve months, and the term will automatically renew for successive twelve-month periods until InReality gives the Company proper notice of non-renewal or the Distribution Agreement is otherwise terminated according to its terms.

As the master distributor in the United States and Canada, the Company will purchase Products from InReality at varying prices determined based on order volume, and sell Products to distributors, resellers and end users in the United States and Canada. The Company must satisfy minimum purchase requirements in each calendar quarter of the initial term beginning October 1, 2020 in order to maintain its status as exclusive distributor of the Product in the United States and Canada. The Company may establish distributor, reseller and referral programs to sell the Products at its sole discretion. The Company will develop marketing campaigns and strategies to promote Product sales with InReality’s cooperation. The Company will install the Product at the end user’s site and perform basic repairs, troubleshooting, and helpdesk services. InReality will provide escalated technical support for the Product and associated software and platform. The Company and InReality will split revenues derived from activations and subscriptions to the Product’s associated software-as-a-service platform sold by the Company.

The Distribution Agreement contains other customary terms. The foregoing description of the Distributor Agreement is not complete and is qualified in its entirety by reference to the full text of the Distributor Agreement, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### *Sales Agreement*

On June 19, 2020, the Company entered into a Sales Agreement (the “Agreement”) with Roth Capital Partners, LLC (“Roth”) under which the Company may offer and sell, from time to time at its sole discretion, shares of its common stock, par value \$0.01 per share (the “Common Stock”), having an aggregate offering price of up to \$8,000,000 through Roth as the Company’s sales agent.

Roth may sell the Common Stock by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415 of the Securities Act of 1933, as amended. Subject to the terms of the Agreement, Roth will use its commercially reasonable efforts to sell the Common Stock from time to time, based upon instructions from the Company (including any price, time or size limits or other customary parameters or conditions the Company may impose). The Company or Roth may suspend the offering of the Common Stock being made through Roth under the Agreement upon proper notice to the other party. The Company will pay Roth a commission of 3.0% of the gross sales proceeds of any Common Stock sold through Roth under the Agreement, and also has provided Roth with customary indemnification rights.

The Company is not obligated to make any sales of Common Stock under the Agreement. The offering of shares of Common Stock pursuant to the Agreement will terminate upon the earlier of (i) the sale of all Common Stock subject to the Agreement or (ii) termination of the Agreement in accordance with its terms.

The foregoing description of the Agreement is not complete and is qualified in its entirety by reference to the full text of the Agreement, a copy of which is filed herewith as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The shares of Common Stock being offered pursuant to the Agreement will be offered and sold pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-238275). On June 19, 2020, the Company filed a prospectus supplement relating to this offering with the Securities and Exchange Commission.

The legal opinion of Maslon LLP relating to the Common Stock being offered pursuant to the Agreement is filed as Exhibit 5.1 to this Current Report on Form 8-K.

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

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

### **(d) Exhibits**

1.1	<a href="#">Sales Agreement, dated June 19, 2020, by and between Creative Realities, Inc. and Roth Capital Partners, LLC</a>
5.1	<a href="#">Opinion of Maslon LLP</a>
10.1	<a href="#">Master Distribution Agreement dated June 19, 2020 by and between the Company and InReality, LLC.</a>
23.1	<a href="#">Consent of Maslon LLP (included in Exhibit 5.1)</a>

**SIGNATURE**

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

**CREATIVE REALITIES, INC.**  
(Registrant)

Date: June 19, 2020

By: /s/ Will Logan  
WILL LOGAN  
*Chief Financial Officer*

## CREATIVE REALITIES, INC.

\$8,000,000

Common Stock  
(\$0.01 par value per share)

## Sales Agreement

June 19, 2020

Roth Capital Partners, LLC  
888 San Clemente Drive, Suite 400  
Newport Beach, CA 92660

Ladies and Gentlemen:

Creative Realities, Inc., a Minnesota corporation (the "Company"), confirms its agreement (this "Agreement") with Roth Capital Partners, LLC (the "Agent"), as follows:

1. Issuance and Sale of Shares. The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through or to the Agent, shares (the "Placement Shares") of common stock of the Company, \$0.01 par value per share (the "Common Stock"), having an aggregate offering price of up to \$8,000,000, *provided, however*, that in no event shall the Company issue or sell through Agent such number of Placement Shares that (a) exceeds the number or dollar amount of shares of Common Stock that may be sold pursuant to the Registration Statement (as defined below), or (b) exceeds the number of authorized but unissued shares of Common Stock of the Company (the "Maximum Amount"). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that Agent shall have no obligation in connection with such compliance. The issuance and sale of Placement Shares through or to Agent will be effected pursuant to the Registration Statement filed by the Company and declared effective by the Securities and Exchange Commission (the "Commission"), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue any Placement Shares.

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The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (the “Securities Act”), with the Commission a registration statement on Form S-3 (File No. 333-238275), including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the “Exchange Act”). The Company has prepared a prospectus supplement to the base prospectus included as part of such registration statement that specifically relates to the Placement Shares (the “Prospectus Supplement”). The Company will furnish to the Agent, for use by the Agent, copies of the base prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares. Except where the context otherwise requires, such registration statement, and any post-effective amendment thereto, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act, or any subsequent registration statement on Form S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company to cover any Placement Shares, is herein called the “Registration Statement.” The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any then issued Issuer Free Writing Prospectus (defined below), is herein called the “Prospectus.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto, shall be deemed to refer to and include the documents incorporated or deemed to be incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein (the “Incorporated Documents”). For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “EDGAR”).

2. Placements. Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “Placement”), it will notify the Agent by email notice (or other method mutually agreed to in writing by the Parties) of the number or dollar value of Placement Shares, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a “Placement Notice”), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individual representatives of the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individual representatives of the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) the Agreement has been terminated under the provisions of Section 12. The amount of any discount, commission or other compensation to be paid by the Company to Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by Agent. Subject to the provisions of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of The NASDAQ Capital Market (the “Exchange”), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415 of the Securities Act.

4. Suspension of Sales.

(a) The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares; provided, however, that such suspension shall not affect or impair any party’s obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. Each party agrees that no such notice under this Section 4 shall be effective against any other party unless it is made to one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

(b) Notwithstanding any other provision of this Agreement, during any period in which the Company is in possession of material non-public information, the Company and the Agent agree that (i) no sale of Placement Shares will take place, (ii) the Company shall not request the sale of any Placement Shares, and (iii) the Agent shall not be obligated to sell or offer to sell any Placement Shares.

5. Sale and Delivery to the Agent; Settlement.

(a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent’s acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Exchange to sell such Placement Shares up to the amount specified in such Placement Notice, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations and the rules of the Exchange to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agent and the Company.

(b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2<sup>nd</sup>) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a “Settlement Date”). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the “Net Proceeds”) will be equal to the aggregate sales price received by the Agent for the Placement Shares, after deduction for (i) the Agent’s commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(c) Delivery of Placement Shares. On each Settlement Date, against payment of the Net Proceeds by the Agent, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent’s or its designee’s account (provided the Agent shall have given the Company written notice of such designee prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or reasonable and documented expense (including reasonable and documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement, the Maximum Amount, (B) the amount available for offer and sale under the Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement by the Company’s board of directors, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company’s board of directors, duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Further, under no circumstances shall the Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

6. Representations and Warranties of the Company. Except as disclosed in the Registration Statement or Prospectus (including the Incorporated Documents), the Company represents and warrants to, and agrees with the Agent that as of the date of this Agreement and as of each Applicable Time (as defined below), unless such representation, warranty or agreement specifies a different date or time:

(a) Registration Statement and Prospectus. The Company and the transactions contemplated by this Agreement meet the requirements for and comply with the conditions for the use of Form S-3 under the Securities Act. The Registration Statement has been filed with the Commission and declared effective under the Securities Act. The Prospectus Supplement will name the Agent as the agent in the section entitled "Plan of Distribution." The Company has not received, and has no notice of, any order of the Commission preventing or suspending the use of the Registration Statement, or threatening or instituting proceedings for that purpose. The Registration Statement and the offer and sale of Placement Shares as contemplated hereby meet the requirements of Rule 415 under the Securities Act and comply in all material respects with said Rule. Any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. Copies of the Registration Statement, the Prospectus, and any such amendments or supplements and all documents incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement have been delivered, or are available through EDGAR, to Agent and its counsel. The Company has not distributed and, prior to the later to occur of each Settlement Date and completion of the distribution of the Placement Shares, will not distribute any offering material in connection with the offering or sale of the Placement Shares other than the Registration Statement and the Prospectus and any Issuer Free Writing Prospectus to which Agent has consented, such consent not to be unreasonably withheld, conditioned or delayed. The Company has not, in the 12 months preceding the date hereof, received notice from the Exchange to the effect that the Company is not in compliance with the listing or maintenance requirements, which has not been fully resolved to put the Company back in compliance. The Company has no reason to believe that it will not in the foreseeable future continue to be in compliance with all such listing and maintenance requirements.



(b) No Misstatement or Omission. The Registration Statement, when it became or becomes effective, and the Prospectus, and any amendment or supplement thereto, on the date of such Prospectus or amendment or supplement, conformed and will conform in all material respects with the requirements of the Securities Act. At each Settlement Date, the Registration Statement and the Prospectus, as of such date, will conform in all material respects with the requirements of the Securities Act. The Registration Statement, when it became or becomes effective, did not, and will not, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus and any amendment or supplement thereto, on the date thereof and at each Applicable Time (defined below), did not and will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Incorporated Documents did not, and any further documents filed and incorporated by reference therein will not, when filed with the Commission, contain an untrue statement of a material fact or omit to state a material fact required to be stated in such document or necessary to make the statements in such document, in light of the circumstances under which they were made, not misleading. The foregoing shall not apply to statements in, or omissions from, any such document made in reliance upon, and in conformity with, information furnished to the Company by Agent specifically for use in the preparation thereof.

(c) Conformity with Securities Act and Exchange Act. The Registration Statement, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement thereto, and the Incorporated Documents, when such documents were or are filed with the Commission under the Securities Act or the Exchange Act or became or become effective under the Securities Act, as the case may be, conformed and will conform in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable.

(d) Financial Information. The financial statements of the Company included or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, together with the related notes and schedules, present fairly, in all material respects, the financial position of the Company as of the dates indicated and the results of operations, cash flows and changes in stockholders' equity of the Company for the periods specified and have been prepared in compliance with the requirements of the Securities Act and Exchange Act and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except for (i) such adjustments to accounting standards and practices as are noted therein, (ii) in the case of unaudited interim financial statements, to the extent such financial statements may not include footnotes required by GAAP or may be condensed or summary statements and (iii) such adjustments which will not be material, either individually or in the aggregate) during the periods involved; the other financial and statistical data with respect to the Company contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, are accurately and fairly presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement, or the Prospectus that are not included or incorporated by reference as required; the Company does not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the Registration Statement (excluding the exhibits thereto), and the Prospectus; and all disclosures contained or incorporated by reference in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable.

(e) Conformity with EDGAR Filing. The Prospectus delivered to the Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(f) Organization. The Company is duly organized, validly existing as a corporation and in good standing under the laws of its jurisdiction of organization. The Company is, and will be, duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which its ownership or lease of property or the conduct of its business requires such license or qualification, and has all corporate power and authority necessary to own or hold its properties and to conduct its business as described in the Registration Statement and the Prospectus, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on or affecting the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company or prevent or materially interfere with consummation of the transactions contemplated hereby (a "Material Adverse Effect").

(g) Subsidiaries. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21.1 to the Company's Annual Report on Form 10-K for the most recently ended fiscal year. The Company owns directly or indirectly, all of the equity interests of its subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, except for the liens granted in favor of Slipstream Communications, LLC, an Anguillan limited liability company and secured creditor of the Company, and all the equity interests of its subsidiaries are validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

(h) No Violation or Default. The Company is not (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's knowledge, no other party under any material contract or other agreement to which it is a party is in default in any respect thereunder where such default would reasonably be expected to have a Material Adverse Effect.

(i) No Material Adverse Effect. Subsequent to the respective dates as of which information is given in the Registration Statement, the Prospectus and the Issuer Free Writing Prospectuses, if any, (including any document deemed incorporated by reference therein), there has not been (i) any Material Adverse Effect, (ii) any transaction which is material to the Company, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company which is material to the Company, (iv) any material change in the capital stock or outstanding long-term indebtedness (other than (A) the grant of additional awards under equity incentive plans, (B) changes in the number of outstanding Common Stock due to the issuance of shares upon exercise or conversion of securities exercisable for or convertible into Common Stock outstanding on the date hereof, (C) any repurchase of capital stock of the Company, (D) as a result of the sale of Placement Shares, or (E) other than as publicly reported or announced), or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company other than in each case above in the ordinary course of business or as otherwise disclosed in the Registration Statement or Prospectus (including any document deemed incorporated by reference therein).

(j) Capitalization. The issued and outstanding shares of capital stock of the Company have been validly issued, are fully paid and non-assessable and, other than as disclosed in the Registration Statement or the Prospectus, are not subject to any preemptive rights, rights of first refusal or similar rights. The Company has an authorized, issued and outstanding capitalization as set forth in the Registration Statement and the Prospectus as of the dates referred to therein (other than the grant of additional options and restricted stock units under the Company's existing stock option plans, or changes in the number of outstanding shares of Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof) and such authorized capital stock conforms to the description thereof set forth in the Registration Statement and the Prospectus. The description of the securities of the Company in the Registration Statement and the Prospectus is complete and accurate in all material respects. As of the date referred to therein, the Company does not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or exchangeable for, or any contracts or commitments to issue or sell, any shares of capital stock or other securities.

(k) Authorization; Enforceability. The Company has full legal right, power and authority to enter into this Agreement and perform the transactions contemplated hereby. This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except (i) to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification and contribution provisions of Section 10 hereof may be limited by federal or state securities laws and public policy considered in respect thereof.

(l) Authorization of Placement Shares. The Placement Shares, when issued and delivered pursuant to the terms approved by the board of directors of the Company or a duly authorized committee thereof, against payment therefor as provided herein, will be duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights, and will be registered pursuant to Section 12 of the Exchange Act. The Placement Shares, when issued, will conform in all material respects to the description thereof set forth in or incorporated into the Prospectus.

(m) No Consents Required. No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company this Agreement, the issuance and sale by the Company of the Placement Shares, except for such consents, approvals, authorizations, orders and registrations or qualifications as may be required under applicable state securities laws or by the by-laws and rules of the Financial Industry Regulatory Authority (“FINRA”) or the Exchange in connection with the sale of the Placement Shares by the Agent.

(n) No Preferential Rights. (i) No person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a “Person”), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company (other than upon the exercise of outstanding options, warrants or other rights to purchase Common Stock, or upon the exercise of equity awards that may be granted from time to time under the Company’s employee or director stock option or benefits plans, in each case as disclosed in the Registration Statement or Prospectus), (ii) no Person has any preemptive rights, resale rights, rights of first refusal, or any other rights (whether pursuant to a “poison pill” provision or otherwise) to purchase any Common Stock or shares of any other capital stock or other securities of the Company, (iii) no Person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of Common Stock, and (iv) no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company, or to include any such shares or other securities in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of the Registration Statement or the sale of the Placement Shares as contemplated thereby or otherwise.

(o) Independent Public Accountant. EisnerAmper LLP (the “Accountant”), whose report on the financial statements of the Company is filed with the Commission as part of the Company’s most recent Annual Report on Form 10-K filed with the Commission and incorporated into the Registration Statement and the Prospectus, are and, during the periods covered by their report, were an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States). To the Company’s knowledge, the Accountant is not in violation of the auditor independence requirements of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) with respect to the Company.

(p) Enforceability of Agreements. All agreements between the Company and third parties expressly referenced in the Prospectus are legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(q) No Litigation. There are no legal, governmental or regulatory actions, suits or proceedings pending, nor, to the Company's knowledge, any legal, governmental or regulatory investigations, to which the Company is a party or to which any property of the Company is the subject that, individually or in the aggregate, if determined adversely to the Company would reasonably be expected to have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under this Agreement; to the Company's knowledge, no such actions, suits or proceedings are threatened or contemplated by any governmental or regulatory authority or threatened by others that, individually or in the aggregate, if determined adversely to the Company, would reasonably be expected to have a Material Adverse Effect; and (i) there are no current or pending legal, governmental or regulatory investigations, actions, suits or proceedings that are required under the Securities Act to be described in the Prospectus that are not so described; and (ii) there are no contracts or other documents that are required under the Securities Act to be filed as exhibits to the Registration Statement that are not so filed.

(r) Licenses and Permits. The Company possesses or has obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as described in the Registration Statement and the Prospectus (the "Permits"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has not received written notice of any proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(s) No Material Defaults. The Company has not defaulted on any installment on indebtedness for borrowed money (except to the extent such indebtedness remains fully accrued on the Company's financial statements) or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect

(t) S-3 Eligibility. At the time the Registration Statement was or will be declared effective, and at the time the Company's most recent Annual Report on Form 10-K was filed with the Commission, the Company met or will meet the then applicable requirements for the use of Form S-3 under the Securities Act, including, but not limited to, General Instruction I.B.6 of Form S-3, if applicable. As of the close of trading on the Exchange on May 13, 2020, the aggregate market value of the outstanding voting and non-voting common equity (as defined in Rule 405) of the Company held by persons other than affiliates of the Company (pursuant to Rule 144 of the Securities Act, those that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the Company) (the "Non-Affiliate Shares"), was approximately \$21,665,351 (calculated by multiplying (x) the price at which the common equity of the Company was last sold on the Exchange on May 13, 2020 times (y) the number of Non-Affiliate Shares). The Company is not a shell company (as defined in Rule 405 under the Securities Act) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in General Instruction I.B.6 of Form S-3) with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

(u) Certain Market Activities. Neither the Company nor, to the Company's knowledge, any of its directors, officers or controlling persons has taken, directly or indirectly, any action designed, or that has constituted or would reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

(v) Broker/Dealer Relationships. Neither the Company nor any related entities (i) is required to register as a "broker" or "dealer" in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a "person associated with a member" or "associated person of a member" (within the meaning set forth in the FINRA Manual).

(w) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(x) Taxes. The Company has filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, or such taxes (and any applicable penalties thereon) have been fully accrued on the Company's financial statements. Except as otherwise disclosed in or contemplated by the Registration Statement or the Prospectus, no tax deficiency has been determined adversely to the Company which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it which reasonably would be expected to have a Material Adverse Effect.

(y) Title to Real and Personal Property. The Company has good and valid title in fee simple to all items of real property and good and valid title to all personal property described in the Registration Statement or Prospectus as being owned by it that are material to the business of the Company, in each case free and clear of all liens, encumbrances and claims, except those that (i) do not materially interfere with the use made and proposed to be made of such property by the Company or (ii) would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Any real property described in the Registration Statement or Prospectus as being leased by the Company is held by it under valid, existing and enforceable leases, except those that (A) do not materially interfere with the use made or proposed to be made of such property by the Company or (B) would not be reasonably expected to have a Material Adverse Effect.

(z) Intellectual Property. The Company owns or possesses adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "Intellectual Property"), necessary for the conduct of its business as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company has not received any written notice of any claim of infringement or conflict which asserted Intellectual Property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would reasonably be expected to result in a Material Adverse Effect; there are no pending, or to the Company's knowledge, threatened judicial proceedings or interference proceedings against the Company challenging the Company's rights in or to or the validity of the scope of any of the Company's patents, patent applications or proprietary information, except for such right or claim that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(aa) Environmental Laws. The Company (i) is in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) has received and is in compliance with all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its businesses as described in the Registration Statement and the Prospectus; and (iii) has not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(bb) Disclosure Controls. The Company maintains systems of internal controls designed to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Prospectus); provided that the Company is evaluating the sufficiency of its internal controls in light of the issuance of options on May 20, 2020 that were the subject of the Exchange's notice of noncompliance on June 3, 2020. Since the date of the latest audited financial statements of the Company included in the Prospectus, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Prospectus). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company is made known to the certifying officers by others within those entities, particularly during the period in which the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "Evaluation Date"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 307(b) of Regulation S-K under the Securities Act) or, to the Company's knowledge, in other factors that could significantly and adversely affect the Company's internal controls. To the knowledge of the Company, the Company's "internal controls over financial reporting" and "disclosure controls and procedures" are effective; provided that the Company is evaluating the sufficiency of its internal controls in light of the issuance of options on May 20, 2020 that were the subject of the Exchange's notice of noncompliance on June 3, 2020.

(cc) Sarbanes-Oxley. The Company is not aware of any failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any applicable provisions of the Sarbanes-Oxley Act and the applicable rules and regulations promulgated thereunder in all material respects. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act.

(dd) Finder's Fees. The Company has not incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the transactions herein contemplated, except as may otherwise exist with respect to Agent pursuant to this Agreement.

(ee) Labor Disputes. No labor disturbance by or dispute with employees of the Company exists or, to the knowledge of the Company, is threatened which would be reasonably likely to have a Material Adverse Effect.



(ff) Investment Company Act. The Company is not or after giving effect to the offering and sale of the Placement Shares, will not be an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”).

(gg) Operations. The operations of the Company are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company is subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”), except as would not reasonably be expected to have a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(hh) Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, and/or, to the knowledge of the Company, any of its affiliates and any unconsolidated entity, including, but not limited to, any structural finance, special purpose or limited purpose entity (each, an “Off Balance Sheet Transaction”) that could reasonably be expected to affect materially the Company’s liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the Commission’s Statement about Management’s Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Prospectus which have not been described as required.

(ii) Underwriter Agreements. Other than with respect to this Agreement, the Company is not a party to any agreement with an agent or underwriter for any other “at the market” or continuous equity transaction.

(jj) ERISA. To the knowledge of the Company, each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), that is maintained, administered or contributed to by the Company or any of its affiliates for employees or former employees of the Company has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “Code”); no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no “accumulated funding deficiency” as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions, except, in each case, as would not reasonably be expected to have a Material Adverse Effect.

(kk) Forward Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) (a “Forward Looking Statement”) contained in the Registration Statement and the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith. The Forward Looking Statements incorporated by reference in the Registration Statement and the Prospectus from the Company’s Annual Report on Form 10-K for the fiscal year most recently ended (i) are within the coverage of the safe harbor for forward looking statements set forth in Section 27A of the Securities Act, Rule 175(b) under the Securities Act or Rule 3b-6 under the Exchange Act, as applicable, (ii) were made by the Company with a reasonable basis and in good faith and reflect the Company’s good faith commercially reasonable best estimate of the matters described therein as of the respective dates on which such statements were made, and (iii) have been prepared in accordance with Item 10 of Regulation S-K under the Securities Act.

(ll) Agent Purchases. The Company acknowledges and agrees that Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect, provided, that (i) no such purchase or sales shall take place while a Placement Notice is in effect (except to the extent each Agent may engage in sales of Placement Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

(mm) Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(nn) Insurance. The Company carries, or is covered by, insurance in such amounts and covering such risks as the Company reasonably believes is adequate for the conduct of its business and as is customary for companies of similar size and capitalization engaged in similar businesses in similar industries.

(oo) No Improper Practices. (i) Neither the Company, nor to the Company’s knowledge, any of its executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the Prospectus; (ii) no relationship, direct or indirect, exists between or among the Company or, to the Company’s knowledge, any affiliate of the Company, on the one hand, and the directors, officers and stockholders of the Company, that is required by the Securities Act to be described in the Registration Statement and the Prospectus that is not so described; (iii) no relationship, direct or indirect, exists between or among the Company, or any affiliate of the Company, on the one hand, and the directors, officers, stockholders or directors of the Company that is required by the rules of FINRA to be described in the Registration Statement and the Prospectus that is not so described; (iv) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company to or for the benefit of any of its officers or directors or any of the members of the families of any of them; (v) the Company has not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company to alter the customer’s or supplier’s level or type of business with the Company or (B) a trade journalist or publication to write or publish favorable information about the Company or any of its products or services, and, (vi) neither the Company nor, to the Company’s knowledge, any employee or agent of the Company has made any payment of funds of the Company or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977, which payment, receipt or retention of funds is of a character required to be disclosed in the Registration Statement or the Prospectus).

(pp) Compliance with Applicable Laws. To its knowledge, the Company and each of its subsidiaries are conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not reasonably be expected to result in a Material Adverse Effect.

(qq) Status Under the Securities Act. The Company was not and is not an ineligible issuer as defined in Rule 405 under the Securities Act at the times specified in Rules 164 and 433 under the Securities Act in connection with the offering of the Placement Shares.

(rr) No Misstatement or Omission in an Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time (as defined in Section 24 below), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any incorporated document deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Agent specifically for use therein.

(ss) No Conflicts. Neither the execution of this Agreement, nor the issuance, offering or sale of the Placement Shares, nor the consummation of any of the transactions contemplated herein and therein, nor the compliance by the Company with the terms and provisions hereof and thereof will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived and (ii) such conflicts, breaches and defaults that would not reasonably be expected to have a Material Adverse Effect; nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company.

(tt) OFAC. Neither the Company, nor to the knowledge of the Company, any director, officer, agent, employee, affiliate or representative of the Company is a government, individual or entity (in this paragraph (tt), “Person”) that is, or is owned or controlled by a Person that is, currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), the United Nations Security Council (“UNSC”), the European Union (“EU”), Her Majesty’s Treasury (“HMT”), or other relevant sanctions authority (collectively, “Sanctions”), nor located, organized or resident in a country or territory that is the subject of Sanctions; provided however, that for the purposes of this paragraph (tt), no person shall be an affiliate of the Company solely by reason of owning less than a majority of any class of voting securities of the Company. The Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC. The Company represents and covenants that, except as detailed in the Prospectus, for the past 5 years, the Company has not knowingly engaged in, is not now 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 is or was the subject of Sanctions.

(uu) Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid by the Company in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with in all material respects.

Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act) (the “Prospectus Delivery Period”) (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent’s request, any amendments or supplements to the Registration Statement or Prospectus that, in such Agent’s reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (provided, however, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent’s right to rely on the representations and warranties made by the Company in this Agreement and provided, further, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Placement Shares unless a copy thereof has been submitted to Agent within a reasonable period of time before the filing and the Agent has not reasonably and in good faith objected thereto (provided, however, that (A) the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent’s right to rely on the representations and warranties made by the Company in this Agreement and (B) the Company has no obligation to provide the Agent any advance copy of such filing or to provide the Agent an opportunity to object to such filing if the filing does not name the Agent or does not relate to the transaction herein provided; and provided, further, that the only remedy Agent shall have with respect to the failure to by the Company to obtain such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company’s reasonable opinion or reasonable objections, shall be made exclusively by the Company).

(b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

(c) Delivery of Prospectus; Subsequent Changes. During the Prospectus Delivery Period, the Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430A under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430A and to notify the Agent promptly of all such filings. If during the Prospectus Delivery Period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during the Prospectus Delivery Period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; provided, however, that the Company may delay the filing of any amendment or supplement, if in the judgment of the Company, it is in the best interests of the Company.

(d) Listing of Placement Shares. During the Prospectus Delivery Period, the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on the Exchange and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as Agent reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; provided, however, that the Company shall not be required in connection therewith to qualify as a foreign corporation or dealer in securities or file a general consent to service of process in any jurisdiction.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during the Prospectus Delivery Period (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; provided, however, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act.

(g) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(h) Notice of Other Sales. Without prior written notice to Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the date on which any Placement Notice is delivered to Agent hereunder and ending on the second (2<sup>nd</sup>) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other “at the market” or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the termination of this Agreement; provided, however, that such restrictions will not be required in connection with the Company’s issuance or sale of (i) Common Stock, restricted stock units, options to purchase Common Stock or Common Stock issuable upon the exercise of options, pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent, and (iii) Common Stock, or securities convertible into or exercisable for Common Stock, offered and sold in a negotiated transaction to vendors, customers, strategic partners or potential strategic partners, acquisition candidates or other investors conducted in a manner so as not to be integrated with the offering of Common Stock hereby.

(i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice, advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

(j) Due Diligence Cooperation. During the term of this Agreement, the Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company’s principal offices, as the Agent may reasonably request.

(k) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing under Rule 424(b), a “Filing Date”), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agent, the Net Proceeds to the Company and the compensation payable by the Company to the Agent with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(l) Representation Dates; Certificate. On the date of this Agreement and within five (5) trading days of each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

(iii) files a quarterly report on Form 10-Q under the Exchange Act; or

(iv) files a current report on Form 8-K containing amended financial information (other than information “furnished” pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act; (Each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “Representation Date”)

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate, in the form attached hereto as Exhibit 7(l) (the “Representation Date Certificate”); provided however, if no Placement Notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with a Representation Date Certificate. The requirement to provide a Representation Date Certificate shall be waived for any Representation Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; provided, however, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide the Agent with a Representation Date Certificate, then before the Company delivers the Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with a Representation Date Certificate, dated the date of the Placement Notice.

(m) Legal Opinion. On the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion and negative assurance letter of Maslon LLP (“Company Counsel”), or other counsel reasonably satisfactory to the Agent, in form and substance reasonably satisfactory to Agent and its counsel. Thereafter, within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a Representation Date Certificate for which no waiver is applicable, the Company shall cause to be furnished to the Agent a negative assurance letter of Company Counsel in form and substance reasonably satisfactory to Agent and its counsel; provided however, if no Placement Notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with such negative assurance letter; provided, further, that in lieu of such negative assurance letter for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “Reliance Letter”) to the effect that the Agent may rely on a prior negative assurance letter delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior negative assurance letter shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).



(n) Comfort Letter. (1) On the date of this Agreement and (2) within five (5) Trading Days of each Representation Date, with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(l) for which no waiver is applicable, the Company shall cause its independent accountants to furnish the Agent letters (the "Comfort Letters"), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); provided however, if no placement notice is pending at such Representation Date, then before the Company delivers a Placement Notice or the Agent sells any Placement Shares, the Company shall provide the Agent with the Comfort Letter; provided, further, that if requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event, including the restatement of the Company's financial statements. The Comfort Letter from the Company's independent accountants shall be in a form and substance reasonably satisfactory to the Agent, (i) confirming that they are an independent public accounting firm within the meaning of the Securities Act and the Public Company Accounting Oversight Board (the "PCAOB"), (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "Initial Comfort Letter") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(o) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or would reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock in violation of Regulation M, or (ii) sell, bid for, or purchase Common Stock, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agent.

(p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that it will not become, at any time prior to the termination of this Agreement, an "investment company," as such term is defined in the Investment Company Act.

(q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than Agent in their capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(r) Sarbanes-Oxley Act. The Company will maintain and keep accurate books and records reflecting its assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with GAAP, (iii) that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company will use commercially reasonable efforts to maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company is made known to it by others within the Company, particularly during the period in which such periodic reports are being prepared.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation, filing, including any fees required by the Commission, and printing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the reasonable and documented out-of-pocket expenses of Agent, including fees and disbursements of counsel to the Agent up to \$40,000 (which amount shall include all fees and disbursements of such counsel described in clause (ix) below) and quarterly disbursements of counsel to the Agent up to \$5,000 per calendar quarter, (vi) the printing and delivery to the Agent of copies of any Permitted Issuer Free Writing Prospectus (defined below) and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (vii) the preparation, printing and delivery to the Agent of copies of the blue sky survey and any Canadian "wrapper" and any supplements thereto, in such number as the Agent shall deem necessary, (viii) the fees and expenses of the transfer agent and registrar for the Common Stock, (ix) the fees and expenses incident to any review by FINRA of the terms of the sale of the Placement Shares, including fees and expenses of counsel to the Agent, and (x) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. The Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change, on a consolidated basis, in the authorized capital stock of the Company or any Material Adverse Effect, or any development that would reasonably be expected to cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinion. The Agent shall have received the opinions of Company Counsel required to be delivered pursuant Section 7(m) on or before the date on which such delivery of such opinion is required pursuant to Section 7(m).

(f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant Section 7(n) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

(g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l) on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

(h) Officer's Certificate. On the date of this Agreement, the Agent shall have received a certificate, signed on behalf of the Company by a duly authorized officer, in form and substance satisfactory to the Agent and its counsel.

(i) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange, and the Common Stock shall not have been delisted from the Exchange.

(j) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, certificates and documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof.

(k) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(l) Approval for Listing. The Placement Shares shall either have been approved for listing on the Exchange, subject only to notice of issuance, or the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice.

(m) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 12(a).

10. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Agent, which consent shall not unreasonably be delayed or withheld; and

(iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above, provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with written information furnished to the Company by the Agent expressly for use in the Registration Statement (or any amendment thereto), or in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto).

(b) Agent Indemnification. Agent agrees to indemnify and hold harmless the Company and its directors and each officer of the Company who signed the Registration Statement, and each person, if any, who (i) controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act or (ii) is controlled by or is under common control with the Company against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information relating to the Agent and furnished to the Company in writing by the Agent expressly for use therein.

(c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 10 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 10, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 10 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 10 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on written advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on written advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly after the indemnifying party receives a written invoice relating to fees, disbursements and other charges in reasonable detail. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 10 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 10 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than the Agent, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total net proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent (before deducting expenses) from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 10(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 10(d) shall be deemed to include, for the purpose of this Section 10(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 10(c) hereof. Notwithstanding the foregoing provisions of this Section 10(d), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 10(d), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of the Agent, will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 10(d), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 10(d) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 10(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 10(c) hereof.

11. Additional Representations and Covenants.

(a) Representations and Covenants of the Agent. The Agent represents and warrants that it is duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required. The Agent shall continue, for the term of this Agreement, to be duly registered as a broker-dealer under FINRA, the Exchange Act and the applicable statutes and regulations of each state in which the Placement Shares will be offered and sold, except such states in which the Agent is exempt from registration or such registration is not otherwise required, during the term of this Agreement. The Agent shall comply with all applicable law and regulations in connection with the transactions contemplated by this Agreement, including the issuance and sale through the Agent of the Placement Shares.

(b) Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 10 of this Agreement and all representations and warranties of the Company and the Agent herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.



## 12. Termination.

(a) The Agent may terminate this Agreement, by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any Material Adverse Effect, or any development that is reasonably likely to have a Material Adverse Effect or, in the sole judgment of the Agent, is material and adverse and makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Expenses), Section 10 (Indemnification), Section 11 (Survival of Representations), Section 17 (Governing Law; Consent to Jurisdiction) and Section 18 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 12(a), the Agent shall provide the required notice as specified in Section 13 (Notices).

(b) The Company shall have the right, by giving five (5) days' written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(c) The Agent shall have the right, by giving five (5) days' written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 12, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agent on the terms and subject to the conditions set forth herein; provided that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), (b), (c), or (d) above or otherwise by mutual agreement of the parties; provided, however, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 10, Section 11, Section 17 and Section 18 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; provided, however, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. Upon termination of this Agreement, the Company shall not have any liability to the Agent for any discount, commission or other compensation with respect to any Placement Shares not otherwise sold by the Agent under this Agreement; provided, however, if such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

(g) Subject to the additional limitations set forth in Section 8 of this Agreement, in the event of termination of this Agreement prior to the sale of any Placement Shares, the Agent shall be entitled only to reimbursement of its out-of-pocket expenses actually incurred and documented.

13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Roth Capital Partners, LLC  
888 San Clemente  
Newport Beach, CA 92660  
Fax No.: (949) 720-7227  
Attention: Managing Director

and

Pryor Cashman LLP  
7 Times Square  
New York, NY 10036  
Attn: M. Ali Panjwani, Esq.  
E-mail: ali.panjwani@pryorcashman.com

and if to the Company, shall be delivered to:

Creative Realities, Inc.  
13100 Magisterial Drive, Suite 100  
Louisville, KY 40223  
Attn: Chief Executive Officer  
E-mail: rick.mills@cri.com

with a copy to:

Maslon LLP  
3300 Wells Fargo Center  
90 South 7<sup>th</sup> Street  
Minneapolis, MN 55402  
Attn: Bradley A. Pederson, Esq.  
E-mail: bradley.pederson@maslon.com

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally, or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid).

An electronic communication ("Electronic Notice") shall be deemed written notice for purposes of this Section 13 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed delivered at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("Nonelectronic Notice") which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 10 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

15. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

16. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) together with that certain engagement letter dated June 9, 2020 between the Company and the Agent (the "Engagement Letter"), constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent; provided, however, that each of the Company and the Agent may amend the list of their respective individual representatives set forth on Schedule 3 by notice to the other, which will not be considered an amendment to this Agreement for purposes hereof. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

17. **GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. **CONSENT TO JURISDICTION.** EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

19. **Use of Information.** The Agent may not use any information gained in connection with this Agreement and the transactions contemplated by this Agreement, including due diligence, to advise any party with respect to transactions not expressly approved by the Company.

20. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission.

21. **Effect of Headings.** The section and Exhibit headings herein are for convenience only and shall not affect the construction hereof.

22. Permitted Free Writing Prospectuses.

The Company represents, warrants and agrees that, unless it obtains the prior consent of the Agent, which consent shall not be unreasonably withheld, conditioned or delayed, and the Agent represents, warrants and agrees that, unless it obtains the prior consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping.

23. Absence of Fiduciary Relationship.

The Company acknowledges and agrees that:

(a) The Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) the Agent has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company, other than in respect of the Agent’s obligations under this Agreement and to keep information provided by the Company to the Agent and the Agent’s counsel confidential to the extent not otherwise publicly-available.

#### 24. Definitions.

As used in this Agreement, the following terms have the respective meanings set forth below:

“Applicable Time” means (i) each Representation Date, and (ii) the time of each sale of any Placement Shares pursuant to this Agreement.

“Business Day” shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Securities Act.

“Rule 172,” “Rule 405,” “Rule 415,” “Rule 424,” “Rule 424(b),” “Rule 430B,” and “Rule 433” refer to such rules under the Securities Act.

“Trading Day” means any day on which shares of Common Stock are purchased and sold on the Exchange.

All references in this Agreement to financial statements and schedules and other information that is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to “supplements” to the Prospectus shall include, without limitation, any supplements, “wrappers” or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agent outside of the United States.

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

**CREATIVE REALITIES, INC.**

By: /s/ Rick Mills

Name: Rick Mills

Title: Chief Executive Officer

ACCEPTED as of the date first-above written:

**ROTH CAPITAL PARTNERS, LLC**

By: /s/ Aaron Gurewitz

Name: Aaron Gurewitz

Title: Head of Equity Capital Markets

SCHEDULE 1

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**FORM OF PLACEMENT NOTICE**

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From: CREATIVE REALITIES, INC.

To: ROTH CAPITAL PARTNERS, LLC

Attention: \_\_\_\_\_

Subject: Placement Notice

Date:

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between, Creative Realities, Inc. (the "Company") and Roth Capital Partners, LLC ("Agent"), dated June 19, 2020, the Company hereby requests that the Agent sell up to \_\_\_\_\_ shares of the Company's Common Stock, \$0.01 par value per share, at a minimum market price of \$\_\_\_\_\_ per share, during the time period beginning [month, day, time] and ending [month, day, time].



**SCHEDULE 2**

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**Compensation**

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The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to 3% of the gross proceeds from each sale of Placement Shares.

SCHEDULE 3

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Notice Parties

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The Company

Rick Mills, CEO, rick.mills@cri.com  
Will Logan, CFO, will.logan@cri.com

The Agent

RothECM@roth.com



**EXHIBIT 7(m)**

**Form of Representation Date Certificate**

\_\_\_\_\_, 2020

This Representation Date Certificate (this "Certificate") is executed and delivered pursuant to Section 7(l) of the Sales Agreement (the "Agreement"), dated June 19, 2020, and entered into between Creative Realities, Inc. (the "Company") and Roth Capital Partners, LLC. All capitalized terms used but not defined herein shall have the meanings given to such terms in the Agreement.

The undersigned, a duly appointed and authorized officer of the Company, having made all necessary inquiries to establish the accuracy of the statements below and having been authorized by the Company to execute this certificate, hereby certifies in his official capacity and not in his individual capacity, as follows:

1. As of the date of this Certificate, (i) the Registration Statement does not 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 not misleading, (ii) neither the Registration Statement nor the Prospectus 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, and (iii) no event has occurred as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein not untrue or misleading.
2. Each of the representations and warranties of the Company contained in the Agreement were, when originally made, and are, as of the date of this Certificate, true and correct in all material respects.
3. Except to the extent waived by the Agent, each of the covenants required to be performed by the Company in the Agreement on or prior to the date of the Agreement and this Representation Date has been duly and timely performed in all material respects and each condition required to be complied with by the Company on or prior to the date of the Agreement and this Representation Date has been duly and timely complied with in all material respects.
4. Subsequent to the date of the most recent financial statements in the Prospectus, there has been no Material Adverse Effect except as described in the Prospectus, including the Incorporated Documents.
5. No stop order suspending the effectiveness of the Registration Statement or of any part thereof has been issued, and no proceedings for that purpose have been instituted or are pending or, to the Company's knowledge, threatened by any securities or other governmental authority (including, without limitation, the Commission).

The undersigned has executed this Representation Date Certificate as of the date first written above.

**Creative Realities, Inc.**

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

June 19, 2020

Creative Realities, Inc.  
13100 Magisterial Drive, Suite 100  
Louisville, KY 40223

**Re: Creative Realities, Inc., Registration Statement on Form S-3 (File No. 333- 238275)**

Ladies and Gentlemen:

We have acted as counsel for Creative Realities, Inc., a Minnesota corporation (the "*Company*"), in connection with registration on the Company's Registration Statement on Form S-3, Registration Statement No. 333- 238275 (the "*Registration Statement*") under the Securities Act of 1933, as amended (the "*Act*"). The Registration Statement, which was declared effective on May 26, 2020, relates to the issuance and sale from time to time, pursuant to Rule 415 of the rules and regulations promulgated under the Securities Act, of, among other securities, shares of the Company's common stock, par value \$0.01 per share (the "*Common Stock*"). We have also acted as counsel to the Company in connection with the issuance, offer and sale from time to time of up to an aggregate of \$8,000,000 of Common Stock (the "*Shares*"), pursuant to the Sales Agreement, dated June 19, 2020 by and between the Company and Roth Capital Partners, LLC (the "*Sales Agreement*").

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In connection with our opinion, we have examined the Registration Statement, including the exhibits thereto, the Sales Agreement, and such other documents, corporate records and instruments, and have examined such laws and regulations, as we have deemed necessary for the purposes of this opinion. In making our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity with the originals of all documents submitted to us as copies and the legal capacity of all natural persons. As to matters of fact material to our opinions in this letter, we have relied on certificates and statements from officers and other employees of the Company, public officials and other appropriate persons.

For purposes of the opinion set forth below, we have assumed that the Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of directors, and that in the future the Company does not issue shares of Common Stock, or reduce the total number of shares of Common Stock that the Company is authorized to issue under its Articles of Incorporation, such that the number of authorized but unissued shares of Common Stock under the Company's Articles of Incorporation is less than the number of unissued Shares that may be issued for such minimum price.

Based upon the foregoing, and subject to the qualifications set forth below, we are of the opinion that the Shares have been duly authorized and reserved for issuance and, when issued by the Company and delivered by the Company against payment therefor as contemplated by the Sales Agreement and a Placement Notice (as defined in the Sales Agreement), will be legally issued, fully paid and non-assessable.

The opinions expressed herein are limited to the laws of the State of Minnesota, and we express no opinion as to the laws of any other jurisdiction.

The opinions expressed in this opinion letter are as of the date of this opinion letter only and as to laws covered hereby only as they are in effect on that date, and we assume no obligation to update or supplement such opinion to reflect any facts or circumstances that may come to our attention after that date or any changes in law that may occur or become effective after that date. The opinions herein are limited to the matters expressly set forth in this opinion letter, and no opinion or representation is given or may be inferred beyond the opinions expressly set forth in this opinion letter.

We hereby consent to the use of this opinion as Exhibit 5.1 to a Current Report on Form 8-K of the Company filed on June 19, 2020 and to the reference to us under the caption "Legal Matters" in the prospectus supplement dated June 19, 2020 contained in the Registration Statement. In giving such consent, we do not admit that we are acting within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the SEC thereunder.

Very truly yours,

/s/ MASLON LLP

**MASTER DISTRIBUTION AGREEMENT**

BETWEEN

**CREATIVE REALITIES, INC.**

AND

**INREALITY, LLC**

DATED AS OF: JUNE 19, 2020

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DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (“**Agreement**”), dated as of June 19, 2020, is entered into by and between Creative Realities, Inc., a Minnesota corporation (“**Master Distributor**”), and InReality, LLC, a Wisconsin limited liability company (“**Seller**”, and together with Master Distributor, the “**Parties**”, and each, a “**Party**”).

RECITALS

A. Master Distributor is in the business of providing and selling digital marketing technology and solutions to companies and organizations in the United States.

B. Seller is in the business of developing, manufacturing, and selling digital temperature solutions, including the Goods (as defined below), and providing corresponding software-as-a-service platforms;

C. Master Distributor wishes to purchase the Goods from Seller and resell the Goods to Customers (as defined below), subject to the terms and conditions of this Agreement; and

D. Seller wishes to sell the Goods to Master Distributor and appoint Master Distributor as an exclusive distributor of the Goods in the Territory under the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Capitalized terms have the meanings set out in this Section, or in the Section in which they first appear in this Agreement.

“**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 other, whether at law, in equity, or otherwise.

“**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, this Person.

“**Agreement**” means this Distribution Agreement (including all of its schedules, exhibits, and attachments), as the same may be amended from time to time.

“**Business Day**” means any day except Saturday, Sunday, or any day other than Saturday, Sunday, or a federal holiday.

“**Claim**” means any Action made or brought against a Person entitled to indemnification under Article XIV.

“**Confidential Information**” has the meaning set out in Article XI.

“**Confirmation**” has the meaning set forth in Section 6.03.

“**Control**” (and with correlative meanings, the terms “Controlled by” and “under common Control with”) means, regarding any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Customer**” means a purchaser that is (a) a reseller or distributor, whether or not located in the Territory, who purchases Goods for resale to End Users located in the Territory or (b) an End User in the Territory.

“**Defective**” means not conforming to the warranties in Section 13.01.

“**Defective Goods**” means goods that are Defective, which for the avoidance of doubt, includes any Nonconforming Goods accepted by Master Distributor under Section 7.03.

“**Delivery Date**” means the delivery date for Goods ordered hereunder that is set out in a Purchase Order.

“**Delivery Location**” means the street address specified in the applicable Purchase Order.

“**Disclosing Party**” has the meaning set out in Section 11.01.

“**Dispute**” has the meaning set out in Section 17.13.

“**Dispute Notice**” has the meaning set out in Section 17.13.

“**Effective Date**” means the date first set out in the Preamble to this Agreement.

“**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.

“**End User**” means the final purchaser that (a) has acquired a Good from Master Distributor for (i) its own and its Affiliates’ use and not for resale, remarketing, or distribution or (ii) incorporation into its own services and (b) is an individual or entity, other than any Governmental Authority, located in the Territory. The term “End User” explicitly includes individuals or entities whose operations are headquartered within the Territory, but who acquire Goods from Master Distributor for its own and its Affiliates’ use outside of the Territory.



“**Excess Goods**” means Goods that, when counted together with all other Goods having the same UPC or SKU, as applicable, and received by Master Distributor under the same Purchase Order, are in excess of the quantities of the Goods ordered under that Purchase Order.

“**Force Majeure Event**” has the meaning set out in Section 17.16.

“**Forecast**” means, regarding any three-month period, a good faith, non-binding forecast of Master Distributor’s demand for each calendar month during the period, by Goods, which approximates, as nearly as possible, based on information available at the time to Master Distributor, the Purchase Orders Master Distributor will place in these future calendar months.

“**Goods**” means those goods that are identified in Schedule 1, as it may be revised by the Parties pursuant to Section 5.04 from time to time, including any Software developed by Seller which is embedded in the Goods. For the purposes of Section 7.03 and Section 7.05, Goods are deemed to include Nonconforming Goods.

“**Governmental Authority**” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of the 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 this 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, award, or determination entered by or with any Governmental Authority, including, without limitation, with respect to COVID-19 or any other epidemic or pandemic illness.

“**Initial Term**” has the meaning set out in Section 10.01.

“**Intellectual Property Rights**” means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; (f) semiconductor chips, mask works and the like; and (g) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the Laws of any jurisdiction throughout in any part of the world.

“**Last-Time Buy Period**” has the meaning set out in Section 5.04(a).

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

“**Losses**” has the meaning set out in Section 14.01.

“**Manufacturer**” has the meaning set out in Section 5.08.

“**Master Distributor**” has the meaning set out in the preamble of this Agreement.

“**Master Distributor Contract**” means any material contract or agreement to which Master Distributor is a party or to which any of its material assets are bound.

“**Master Distributor Indemnitees**” has the meaning set out in Section 14.01.

“**Master Distributor’s Trademarks**” means all Trademarks owned by or licensed to Seller and set out in Schedule 3.

“**Nonconforming Good**” means any good received by Master Distributor from Seller under a Purchase Order that: (a) is not a Good; (b) does not conform to the UPC or SKU listed in the applicable Purchase Order; or (c) on visual inspection, Master Distributor reasonably determines are otherwise Defective.

“**Notice**” has the meaning set out in Section 17.04.

“**Notify**” means to give Notice.

“**Party**” has the meaning set out in the Preamble to this Agreement.

“**Patents**” means all patents (including all reissues, divisionals, provisionals, continuations, and continuations-in-part, re-examinations, renewals, substitutions, and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models).

“**Person**” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

“**Personnel**” means agents, employees, or subcontractors engaged or appointed by Seller or Master Distributor, as applicable.

“**Platform**” means the software-as-a-service (SaaS) platform and related services including any documentation; modified versions of the Platform; enhancements; derivations; upgrades; data tables; software code; any application program interface (“API”), device driver interface, or any other interface developed by Seller and future versions of the Platform provided by Seller from time to time in connection with the Goods.

“**Post-Term Resale Period**” has the meaning set out in Section 10.06.

“**Price**” has the meaning set out in Section 5.02.

“**Purchase Order**” means Master Distributor’s then-current standard form purchase order.

“**Purchase Order Transaction Terms**” means any one or more of the following terms specified by Master Distributor in a Purchase Order pursuant to Section 6.02: (a) the Goods to be purchased, including the, UPC or SKU, as applicable; (b) the quantity of each of the Goods ordered; (c) the Delivery Date; (d) the unit Price for each of the Goods to be purchased; (e) the shipment date (f) the billing address; and (g) the Delivery Location.

“**Receiving Party**” has the meaning set out in Section 11.01.

“**Renewal Term**” has the meaning set out in Section 10.02.

“**Representatives**” means a Party’s Affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns.

“**Return Credit**” with respect to any Good means a credit to Master Distributor in an amount equal to the Price less any price protection credits, but not including any early payment or prepayment discounts, if any.

“**Seller**” has the meaning set out in the Preamble of this Agreement.

“**Seller Contract**” means any material contract or agreement to which Seller is a party or to which any of its material assets are bound.

“**Seller’s Intellectual Property Rights**” means all Intellectual Property Rights owned by or licensed to Seller.

“**Seller’s Trademarks**” means all Trademarks owned by or licensed to Seller and set out in Schedule 4.

“**Software**” means all software or programming provided by Seller that is integrated into, necessary for the proper operation of, or otherwise related to the Goods; *provided, however*, that “Software” shall not include (a) the Platform and (b) any API, device driver interface, or any other interface developed by Master Distributor from software owned by the Master Distributor or any third party to integrate into or interface with the Platform or any Software.

“**Subsidiary**” means any majority-owned direct or indirect subsidiary or Affiliate of Master Distributor.

“**Term**” has the meaning set out in Section 10.02.

“**Territory**” has the meaning set forth in a Territory Addendum, which territory may be expanded from time to time by agreement of the parties hereto as set forth in one or more Territory Addendums.

“**Territory Addendum**” means each territory addendum executed by the Parties from time to time substantially in the form of Addendum A, which sets forth, among other things, the Territory and Prices that shall be subject to this Agreement with respect to the Territory therein. Upon execution of a Territory Addendum by each Party, such Territory Addendum shall be deemed to be incorporated into and a part of this Agreement.

“**Trademarks**” means all rights in and to U.S. and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names, and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights and all similar or equivalent rights, or forms of protection in any part of the world.

“**Trade Secrets**” means all inventions, discoveries, trade secrets, business, and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

“**Warranty Period**” has the meaning set out in the written warranty statement provided by Seller to End User as described in Section 13.01.

## ARTICLE II MASTER DISTRIBUTOR RIGHTS

**Section 2.01 Exclusive Appointment.** Seller appoints Master Distributor to act as its exclusive distributor, subject to the Minimum Order Obligations set forth in Addendum A and B, of Goods to Customers in each Territory during the Term and the Post-Term Resale Period in accordance with the terms and conditions of this Agreement, and Master Distributor accepts such appointment. The above appointment made herein establishes Master Distributor as the master distributor to Customers, including distributors, resellers, and End Users. Nothing contained herein shall restrict Master Distributor from having the right to obtain or retain the rights to resell any other goods, including goods that may compete with the Goods.

**Section 2.02 Distributors, Resellers, and Referrals.** Master Distributor may appoint distributors and establish reseller and referral programs as it determines appropriate in its sole and absolute discretion for the effective distribution of Goods under this Agreement. Master Distributor shall bear all costs related to any reseller or referral programs.

**ARTICLE III  
ORDER OF PRECEDENCE**

**Section 3.01 Order of Precedence.** The express terms and conditions contained in this Agreement, the Territory Addendums and the Purchase Order Transaction Terms exclusively govern and control each Party's respective rights and obligations regarding the purchase and sale of the Goods, and the Parties' agreement is expressly limited to such terms and conditions. Notwithstanding the foregoing, if any terms and conditions contained in a Territory Addendum or Purchase Order conflict with any terms and conditions contained in this Agreement, the order of precedence is: (a) the Purchase Order Transaction Terms of the relevant Purchase Order; (b) the Territory Addendum; (c) the Agreement; and (d) the remaining non-conflicting terms of the relevant Purchase Order.

**Section 3.02 Additional or Different Terms.** Without limiting the foregoing, any additional, contrary, or different terms contained in any Confirmation, invoices, or other communications, and any other attempt to modify, supersede, supplement, or otherwise alter this Agreement, are deemed rejected by Master Distributor and will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.

**ARTICLE IV  
PROMOTION AND MARKETING**

**Section 4.01 Master Distributor Performance Obligations.** Master Distributor shall:

- (a) use commercially reasonable efforts to market, promote, and resell the Goods to Customers;
  - (b) maintain a place or places of business, including adequate office, storage, and warehouse facilities and all other facilities as required for Master Distributor to perform its duties under this Agreement;
  - (c) purchase and maintain a representative quantity of the Goods sufficient for and consistent with Master Distributor's Customers' sales needs; *provided, however*, that Master Distributor will not be responsible under this Agreement for any failure to purchase or maintain a sufficient quantity of Goods caused by any act or omission by Seller or Manufacturer.
  - (d) establish and maintain a sales and marketing organization sufficient to develop the market potential for the sale of the Goods, and independent sales representatives, a distribution organization, and facilities sufficient to make the Goods available for shipment by Master Distributor to each Customer;
  - (e) either directly or indirectly through all other resellers, require all End Users to agree to the Seller's Terms of Use prior to accessing the Platform;
  - (f) create and launch marketing, promotion, and sales materials, campaigns, and programs to promote sales of the Goods to Customers;
- and

(g) not make any false or misleading representations or warranties to any Customer regarding Seller or the Goods.

**Section 4.02 Seller Performance Obligations.** Seller shall:

(a) provide any necessary information, material, and support as Master Distributor may reasonably request regarding the marketing, promotion, and sale of Goods and shall notify Master Distributor promptly in the event of any material changes in such information;

(b) provide Master Distributor such marketing, promotional, sales, and technical literature and samples of Goods as Master Distributor may reasonably consider necessary to assist with the promotion of the Goods;

(c) clearly state that Master Distributor is the exclusive distributor of the Goods in the Territory (as long as Master Distributor has the right to be exclusive) in all public-facing documentation relating to the Goods, including, without limitation, on Seller's website and in all marketing, promotional, and sales materials and press releases, except to the extent approved by advance written consent of Master Distributor;

(d) allow Master Distributor to participate in any marketing, promotion, and sales programs, campaigns, or events that Seller may make generally available to its authorized distributors of Goods; and

(e) refer all inquiries for the Goods that Seller receives directly to Master Distributor in each Territory.

**ARTICLE V  
AGREEMENT TO PURCHASE AND SELL THE GOODS**

**Section 5.01 Terms of the Sale.** Seller shall make available and sell Goods to Master Distributor at the Prices and on the terms and conditions set out in this Agreement. Subject to Seller's rights under Addendum A, Master Distributor is not required to purchase any minimum amount or quantity of the Goods.

**Section 5.02 Price and Payment Terms.** The prices ("Prices") and payment terms for Goods sold under this Agreement in each Territory shall be set forth in a Territory Addendum to this Agreement. Except as set forth in a Territory Addendum, all Prices are exclusive of all costs and expenses relating to packing, crating, boxing, transporting, loading and unloading, customs, taxes, tariffs and duties, insurance, and any other similar financial contributions or obligations relating to the production, manufacture, sale, and delivery of the Goods. All Prices are firm and are not subject to increase or decrease for any reason, including changes in market conditions, increases in raw material, component, labor, or overhead costs or because of labor disruptions, or fluctuations in production volumes, except by mutual written agreement by the Parties in accordance with Section 17.10.

**Section 5.04 Availability/Changes in Goods.** Seller shall:

(a) provide Master Distributor with six (6) months' Notice before discontinuing a Good (the period of time from the delivery of Notice through the end of the notice period, the "**Last-Time Buy Period**") and Master Distributor may, at its sole discretion, return any such discontinued Goods in its inventory in accordance with Section 7.04 or exercise its last-time buy rights under Section 5.05;

(b) provide and implement such updates to the Software and the Platform, and on such schedule, as reasonably necessary to maintain the full operation and functionality of the Goods and the Platform in accordance with Section 13.01, and notify Master Distributor at least seven (7) days before the date of any such update;

(c) notify Master Distributor at least thirty (30) days before the date that Seller introduces any new version of a Good, a new good similar to a Good, or replacement of a Good and make such good available for resale by Master Distributor on or before the date it is first introduced in the marketplace and the parties shall negotiate in good faith for the pricing and other terms of such new Good; and

(d) not change any Goods or parts or accessories thereto, except as expressly contemplated in this Agreement, without fourteen (14) days' Notice to Master Distributor.

The Parties may, upon mutual agreement, add or make changes to the Goods listed on, or remove certain Goods from, Schedule 1, in each case without obligation to modify or change any Goods previously delivered or to supply new Goods meeting earlier specifications.

**Section 5.05 Last-Time Buy.** Master Distributor may, but will have no obligation to, make last-time buys during the Last-Time Buy Period of enough Goods to fulfill its then-pending and Forecasted commitments to Customers. Seller shall use commercially reasonable efforts to supply the last time buy and is in no event required to supply any Good if Seller reasonably determines that (a) the Good is infringing or (b) the sale would violate any Law.

**Section 5.06 Allocation.** Subject to Section 5.04, Seller shall employ its best efforts to ensure the production and maintenance of a sufficient Goods inventory and production capacity to permit it to fill Master Distributor's orders as set forth in any Forecast. In the event of any shortage of Goods in Seller's inventory, Seller shall, on order by Master Distributor, ship to Master Distributor at least as many units of the Good as Seller ships to any other customer who has historically ordered similar quantities of Goods, taking into account all customers' purchase histories and industries, among other things. If any Good is subject to limited availability at any time and Master Distributor has placed Purchase Orders for such Good, then either before or after the date such Good becomes subject to limited availability, Seller agrees to Notify Master Distributor before filling any Purchase Order for such Good, and Master Distributor has the right, in its sole discretion and without liability or penalty, to cancel any existing Purchase Order for such Good as the Master Distributor's sole and exclusive remedy.

**Section 5.07 Repurchase by Seller.**

(a) *Mandatory Repurchase.* Upon Seller's termination of this Agreement for any reason, Seller shall repurchase from Master Distributor all Goods remaining in Master Distributor's inventory as of the date of such termination for which Master Distributor, its Affiliates, and any distributor or reseller have no outstanding commitments to any Customer.

(b) *Optional Repurchase.* If requested by Seller, Master Distributor may, at its sole discretion, resell Goods to Seller, provided that such repurchased Goods may only be used or sold by Seller outside the Territory.

(c) *Repurchase Price.* In any case of repurchase and resale under this Section 5.07, the repurchase price will be the most recent acquisition price paid to Seller by Master Distributor for the Goods.

**Section 5.08 Certain Remedies of Master Distributor.** Without limiting any other remedies to which Master Distributor is entitled under this Agreement, Master Distributor may, at its sole discretion:

(a) in the case of (i) the bankruptcy or dissolution of Seller that is not dismissed within thirty (30) days, contract directly with the manufacturer(s) of the Goods (the "**Manufacturer**") to have Goods made, shipped, and delivered to Master Distributor in a manner otherwise consistent with the terms of this Agreement; or

(b) in the case that the Manufacturer either (i) fails to ship Goods to Master Distributor pursuant to the terms of the relevant Purchase Order and this Agreement or (ii) ships Defective Goods to Master Distributor, pursue directly against the Manufacturer any applicable right or remedy available to Master Distributor under this Agreement, at law, in equity, or otherwise.

**ARTICLE VI  
ORDER PROCEDURE**

**Section 6.01 Non-Binding Forecasts.** At least quarterly Master Distributor shall provide Seller with Forecasts. The Forecasts are for information purposes only. Any Good quantities cited in or pursuant to this Agreement, except for quantities cited in a Purchase Order as firm, are preliminary and non-binding only. Master Distributor makes no representation or warranty as to the quantity of Goods that it will purchase, if any.

**Section 6.02 Purchase Order.** Master Distributor shall issue Purchase Orders to Seller in written form via facsimile, email, or US mail.



**Section 6.03 Acceptance and Rejection of Purchase Orders.** Seller shall confirm to Master Distributor the receipt of each Purchase Order issued hereunder (each, a “Confirmation”) within three (3) Business Days following Seller’s receipt thereof by Notice via facsimile, email, or US mail. Each Confirmation must reference Master Distributor’s Purchase Order number, confirm acceptance of the Purchase Order or, solely if permitted under this Section 6.03, advise Master Distributor of Seller’s rejection or modifications of such Purchase Order, the date of acceptance or rejection, and the basis for rejection and requested modification, if applicable. If a modification is requested the parties shall negotiate in good faith any such reasonably requested modifications by Seller. If Seller fails to issue a Confirmation within the time set forth in the first sentence of this Section 6.03, or otherwise commences performance under such Purchase Order, Seller will be deemed to have accepted the Purchase Order. Master Distributor may withdraw any Purchase Order prior to Seller’s acceptance (or deemed acceptance) thereof.

**Section 6.04 Master Distributor’s Right to Terminate Purchase Orders.** In addition to its rights under Section 10.03 to terminate all effective Purchase Orders in connection with the termination of this Agreement, Master Distributor may, in its sole discretion, without liability or penalty, terminate any Purchase Order with or without cause effective within ten (10) days from delivery of such Notice to Seller, and any funds paid to Seller on account of such Purchase Order shall be refunded promptly to Master Distributor or credited towards another Purchase Order of Master Distributor, as directed by Master Distributor.

**Section 6.05 Effect of Termination of Purchase Orders.** If any Purchase Order is terminated under this Article VI or Article X, in accordance with Master Distributor’s written direction, Seller shall immediately cease work and purchasing materials relating to fulfilling the Purchase Order.

**Section 6.06 Master Distributor’s Right to Request Amendments to Purchase Orders.** Master Distributor may, upon reasonable Notice to Seller, request changes to a Purchase Order. Within five (5) days after receiving such request, Seller shall Notify Master Distributor of all Purchase Order Transaction Terms impacts as it shall determine in good faith. Master Distributor may then submit an amended Purchase Order including the revised Purchase Order Transaction Terms set out in Seller’s Notice, which will be subject to acceptance, modification or rejection under Section 6.03.

## ARTICLE VII SHIPMENT AND DELIVERY

**Section 7.01 Shipment and Delivery Requirements.** Seller shall assemble, pack, mark, and ship Goods strictly in the quantities, by the methods, to the Delivery Locations, and by the Delivery Dates, specified in the applicable Purchase Order or this Agreement. Delivery times will be measured to the time that goods are actually received at the Delivery Location. Subject to Section 17.16, time, quantity, and delivery to the Delivery Location are of the essence of this Agreement. If Seller fails to comply with any of its delivery obligations under this Section 7.01, Master Distributor may, without limiting Master Distributor’s other rights under this Agreement or applicable Law, in Master Distributor’s sole discretion and at Seller’s sole cost and expense: (a) approve a revised Delivery Date or (b) require expedited or premium shipment. Unless otherwise expressly agreed by the Parties in writing, Seller may not make partial shipments of goods to Master Distributor.

**Section 7.02 Packaging and Labeling.** Seller shall properly pack, mark, and ship Goods as instructed by Master Distributor and otherwise in accordance with applicable Law , and shall provide Master Distributor with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the quantity of units in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number, and the country of origin.

**Section 7.03 Acceptance of Goods.** Master Distributor shall inspect the Goods within ten (10) days of receipt to determine if the Goods are Defective and provide notice within such period to Seller of such Nonconforming Goods. If the Goods delivered under this Agreement are Nonconforming Goods or Excess Goods, Master Distributor may, at its sole option:

(a) if such Goods are Nonconforming Goods within 10 days of receipt, either:

(i) reject Nonconforming Goods (including entire lots of Goods) and return such Nonconforming Goods to Seller, at Seller's expense and upon receipt of such NonConforming Goods, Seller shall refund all amounts paid for such NonConforming Goods plus any inspection, testing, shipping, handling, and transportation charges paid by Master Distributor; or

(ii) require prompt correction or replacement of such Goods with Goods that are not Defective,

(b) if such Goods are Excess Goods within ten (10) days of receipt, reject such Excess Goods and return such NonConforming Goods to Seller, at Seller's expense and upon receipt of such NonConforming Goods, Seller shall for a refund, plus any inspection, testing, shipping, handling, and transportation charges paid by Master Distributor..

If a refund is provided by Seller, that shall be Master Distributors sole and exclusive remedy under this provision. Otherwise, in each case the exercise by Master Distributor of any other rights available to Master Distributor under this Agreement or pursuant to applicable Law shall not be limited. Master Distributor shall ship from any location, at Seller's expense and risk of loss, the Nonconforming Goods or Excess Goods to the nearest authorized Seller location. If Master Distributor exercises its option to replace Nonconforming Goods, Seller shall, after receiving Master Distributor's shipment of Nonconforming Goods, ship to Master Distributor, at Seller's expense and risk of loss, the replaced Goods to the Delivery Location in a timely manner. Master Distributor will be deemed to have accepted delivered Goods if Master Distributor has not notified Seller that it is exercising its rights under subparagraphs (a) or (b) of this Section 7.03 within five (5) days after the Goods are actually received at the Delivery Location.

**Section 7.04 Right of Return.** Seller understands that Master Distributor anticipates entering into a distribution agreement(s) with third party distributor(s) (e.g., Synnex Corporation) (each a "Distributor"), and will grant the following rights to those Distributors, which Seller acknowledges and agrees to accommodate:

(a) Distributor may return one (1) monthly set of shipments to Master Distributor's warehouse location of any Goods that have been in Distributor's inventory for over ninety (90) days (the "Eligible Products"), and Master Distributor shall issue a credit memo to Distributor for such return. Master Distributor shall be responsible for freight, insurance, taxes, duties and other costs of return and reshipment. No penalty or restocking charges shall apply, provided that the total value of the returned shipment does not exceed 25% of the previous three months aggregate purchases by such Distributor from Master Distributor.

(b) Notwithstanding the foregoing, Distributor shall have the right, from the date of Master Distributor's receipt of the first purchase order from Distributor only and carrying forward for one hundred eighty (180) days, to return for credit to Master Distributor without penalty or restocking charges, any Eligible Products. Upon request of Distributor, Master Distributor shall issue a Return Material Authorization Number in writing for the Eligible Products. Eligible Products shall be returned to Master Distributor and Master Distributor shall be responsible for freight, insurance, taxes, duties and other costs of return and reshipment. Master Distributor shall issue a credit memo to Distributor for the invoice price of the Eligible Products. If requested by Distributor, a Master Distributor representative shall be available to inspect returns at Distributor's warehouse within ten (10) business days of request.

(c) Seller shall promptly notify Master Distributor of the revision, enhancement or discontinuance of production of any Goods in order for Master Distributor to notify each Distributor. Within sixty (60) days after the receipt of such notice by Distributor and no more than sixty (60) days past the actual date of such revision, enhancement or discontinuance, Distributor may return to Master Distributor any Goods covered by that notice, freight prepaid. The amount of such shipment shall not be considered as a portion of that calculated under the guidelines stated in Section 7.04(a). Within thirty (30) days after receipt of the shipment, Master Distributor shall issue a credit memo to Distributor for the invoice price paid by Distributor for such Goods.

(d) Seller shall allow Master Distributor to return, pursuant to Sections 7.04(a) through 7.04(c), any Goods that have been opened by any Distributor or reseller, provided such Goods are complete and in substantially new condition.

For each Good returned to Master Distributor under this Section 7.04, once Seller verifies its quantity and quality, subject to Section 5.03, Seller and Master Distributor shall split the costs associated with such returns evenly.

**Section 7.05 Title and Risk of Loss.** Title and risk of loss to Goods shipped under any Purchase Order passes to Master Distributor upon delivery of the Goods to the Delivery Location. Title will transfer to Master Distributor even if Seller has not been paid for such Goods, provided that Master Distributor will not be relieved of its obligation to pay for Goods in accordance with the terms hereof. Seller will bear all risk of loss or damage regarding Goods until Master Distributor's receipt of such Goods in accordance with the terms hereof.

**Section 7.06 Price Decreases.** The Parties may, from time to time and solely upon mutual agreement, choose to decrease the list price for the Goods. In the event of such price decrease, Seller shall promptly grant Master Distributor a corresponding price decrease and issue a credit memo for an amount equal to fifty percent (50%) of the amount by which the price was decreased for (a) any affected Goods ordered or purchased by Master Distributor, which either have not been shipped or delivered to Master Distributor, and (b) all Goods held in inventory by Master Distributor on the date of such price reduction. Inventory purchased from Master Distributor and still on hand in its Distribution Channel (i.e., its Distributors and resellers) shall be protected as stated above, with the credit for same flowing from Seller, through Master Distributor, to Master Distributor's Distribution Channel. The provisions of this Section 7.06 (a) will only take effect for products received by Master Distributor after June 30, 2020.

**Section 7.07 Best Prices.** The Price for Goods, as amended from time to time, shall be at least as low as the lowest Price that seller offers to any of its distributors and resellers of the Goods in the applicable Territory. If Seller sells any Goods to any of its distributors and resellers of the Goods in the Territory at a price lower than the Price paid by Master Distributor, Seller shall immediately notify Master Distributor of the same. Master Distributor shall immediately thereafter receive such lower Price on such Goods and Seller shall issue a credit memo to Master Distributor for the difference between the Price paid by Master Distributor for all such Goods in Master Distributor's inventory, less such lower Price.

## **ARTICLE VIII INSTALLATION, SUBSCRIPTIONS, AND TECHNICAL SUPPORT**

**Section 8.01 Delivery to Customer; Installation.** Master Distributor shall, at its sole cost, deliver and perform physical installation and setup of Goods and the Software purchased by an End User at the location designated by the End User.

**Section 8.02 Subscription Services.** Master Distributor and Seller shall collaborate on establishing market pricing for Platform subscriptions to be sold to End Users in connection with the Goods as set forth in the Territory Addendum. Master Distributor shall collect revenues attributable to Platform activation fees and monthly subscription fees ("**Subscription Revenues**") directly from End Users. Seller will be entitled to the respective per-unit, one-time royalty fees set forth on the applicable Territory Addendum for each Platform activation and Platform subscription that has been paid to Master Distributor (such net amount, the "**Seller Royalty**"). No later than the thirtieth (30th) day after the end of each calendar quarter during the Term, Master Distributor shall calculate and remit to Seller the Seller Royalty attributable to the prior calendar quarter. Notwithstanding the foregoing, if the Subscription Revenues received by Master Distributor in any calendar month exceed \$50,000, (a) Master Distributor shall calculate and remit to Seller the Seller Royalty attributable to that month no later than the thirtieth (30th) day after the end of that month; and (b) for the duration of the same calendar quarter, Master Distributor shall remit to Seller the Seller Royalty attributable to each remaining calendar month of such calendar quarter no later than the thirtieth (30th) day after the end of each such remaining calendar month. The Seller or, at its option, a certified public accountant paid by the Seller, during the Term and for two (2) years thereafter, but in no event more than once annually, shall have the right to examine and audit such records of the Master Distributor at reasonable times during normal business hours. All audit costs will be paid by the Seller if there is no underpayment of fees to the Seller. In the event such audit discloses that the fees previously paid or reported as due to the Seller have been underpaid or under-reported as of the date of the audit, then Master Distributor shall immediately pay to Seller as applicable any difference between fees paid and fees actually owed and all expenses incurred by Seller in performing the audit.

**Section 8.03 Ongoing Support.** Master Distributor shall perform ongoing technical support for End Users with respect to the Goods, the Software, and the Platform in compliance with Service Level Agreement substantially in the form attached hereto as Exhibit A, to be agreed upon by the parties within 30 days of this Effective Date, as it may be amended from time to time (the “SLA”); *provided, however*, that Seller shall be solely responsible for, and shall promptly provide at its sole cost and expense, all technical support with respect to the Goods and the Software for all issues that (a) render any such item fully or substantially inoperable or inaccessible; (b) prevent any such item from functioning in accordance with the warranties in Section 13.01 in a material way; or (c) prevent End Users from using any of the major features or functionalities of any such item (i.e., Tier 3 issues). For purposes of this Section 8.03, Master Distributor and Seller, respectively, shall be responsible only for their respective costs and expenses arising from their respective duties under this Section 8.03 and the SLA. Any fees received by Master Distributor from End Users in connection with any installation, setup, maintenance, technical support, or other activities under this Article VIII will be excluded from the Seller Royalty.

**Section 8.04 Customer Referrals.** Seller shall refer and direct each End User of the Goods (whether such End User purchases Goods directly from Seller, directly or indirectly through the Master Distributor or otherwise, and whether or not the End User is located in the Territory) to the Master Distributor, so long as the Goods were originally purchased by a Customer or End User located or headquartered in the Territory. Seller shall not solicit or attempt to solicit any such End User to use any software or goods other than the Goods and the Platform.

**Section 8.05 Seller Role with Resellers in Territory.** Seller may, from time to time and with full knowledge of Master Distributor, manage the relationship with resellers of the Goods in the Territory, subject to approval of Master Distributor, at its sole discretion. In such cases, Master Distributor or a Distributor shall process and manage the fulfillment of orders for Goods. Subject always to the agreement of both Parties, situations where this would be deemed appropriate are limited to those where: (a) the Goods are sold by Seller as a component of a broader solution; (b) a reseller from outside the Territory sells to a Customer whose headquarters are outside the Territory, but whose final End User is located inside Territory and reseller desires Goods to be sourced in Territory; (c) a reseller has a conflict of interest with Master Distributor; (d) reseller is a system integrator or value-add reseller with both the desire and the ability to create a solution in which the Goods are a component and will desire Seller’s assistance, technical expertise, and tools such as APIs or SDKs, to integrate with other systems; or (e) Master Distributor, at its sole discretion, requests Seller to manage relationship with reseller directly. In any case above where Seller sells Goods directly to a reseller, Customer, End User, or other Person, Master Distributor will be entitled to the Seller Royalty set forth on Addendum A for each Good sold. Additionally, Master Distributor may perform Billing Support or Billing & Technical Support (both terms, as defined in Schedule 2) for any Good sold pursuant to this Section 8.05, in which case Master Distributor will be entitled to the fees set forth in Schedule 2 for each Good for which Master Distributor provides such services.

**ARTICLE IX  
USE OF SELLER'S INTELLECTUAL PROPERTY**

**Section 9.01 Use of Seller's Name and Trademarks.** Master Distributor and its authorized independent sales representatives, distributors, resellers, referral partners, successors, and assigns are authorized and licensed to:

(a) use Trademarks, service marks and trade names of Seller and any third party licensed by Seller in connection with marketing, promoting, or reselling the Goods, as agreed to in writing by the Seller; and

(b) refer to itself as an authorized distributor of the Goods without limitation in the Territory.

**Section 9.02 Use of Master Distributor's Name and Trademarks.** Seller is authorized and licensed to use Trademarks, service marks, and trade names of Master Distributor solely in connection with marketing and promoting the Goods and fulfilling Seller's obligations under Section 4.02(c).

**Section 9.03 Limited Have Made Rights.** Solely in connection with Master Distributor's exercise of its rights under Section 5.08(a), Master Distributor is granted a license to make and have made Goods under any Patent of Seller that is used in, implicated by, or otherwise connected with the manufacturing and production of Goods.

**ARTICLE X  
TERM; TERMINATION**

**Section 10.01 Initial Term.** The term of this Agreement shall be deemed to have commenced on April 20, 2020 and will continue for a period of twelve (12) months thereafter, unless and until earlier terminated as provided under this Agreement or applicable Law (the "**Initial Term**").

**Section 10.02 Renewal Term.** Upon expiration of the Initial Term, this Agreement automatically renews for additional successive twelve (12) month terms unless and until (a) Master Distributor provides Notice of nonrenewal at least sixty (60) days before the end of the then-current term (a) Seller provides Notice of nonrenewal at least six (6) months before the end of the then-current term or (b) earlier terminated as provided under this Agreement or applicable Law (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**"). If the Term is renewed for any Renewal Term(s) pursuant to this Section 10.02, the terms and conditions of this Agreement during each such Renewal Term are the same as the terms in effect immediately prior to such renewal, subject to any change agreed to by the Parties in accordance with Section 17.07. If Master Distributor or Sellers provides timely Notice of its intent not to renew this Agreement, then, subject to Section 10.01, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

**Section 10.03 Master Distributor's Right to Terminate the Agreement.** Master Distributor may terminate this Agreement (including all related Purchase Orders in accordance with Section 6.04), on Notice to Seller:

(a) except as otherwise specifically provided under this Section 10.03, if Seller is in material breach of any representation, warranty, or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period of time under the circumstances, in no case exceeding fifteen (15) days following Seller's receipt of Notice of such breach;

(b) if Seller:

(i) files or has filed against it, a petition for voluntary or involuntary bankruptcy, or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law and such case is not dismissed within 30 days;

(ii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts;

(iii) makes or seeks to make a general assignment for the benefit of its creditors; or

(iv) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

(c) in the event of a Force Majeure Event affecting Seller's performance of this Agreement for more than thirty (30) consecutive days;

(d) if, without obtaining Master Distributor's prior written consent, (i) Seller sells, leases or exchanges a material portion of Seller's assets, (ii) Seller merges or consolidates with or into another Person, or (iii) a change in Control of Seller occurs, unless in the case of a merger or consolidation of Seller with another Person, Seller is the surviving entity and has a net worth greater than or equal to its net worth immediately prior to the merger or consolidation; or

(e) at its option and for any reason upon ninety (90) days' written notice to Seller.

Any termination under this Section 10.03 is effective on Seller's receipt of Master Distributor's Notice of termination or any later date set out in the Notice.

**Section 10.04 Seller's Right to Terminate for Cause.** Seller may terminate this Agreement (including all related Purchase Orders) on Notice to Master Distributor:

(a) except as otherwise specifically provided under this Section 10.04, if Master Distributor is in material breach of any representation, warranty, or covenant of Master Distributor under this Agreement, and either the breach cannot be cured or, if the breach can be cured, it is not cured by Master Distributor within a commercially reasonable period of time (in no case exceeding fifteen (15) days after Master Distributor's receipt of Notice of such breach).

(b) if Master Distributor:

(i) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, that is not dismissed within 30 days;

(ii) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts;

(iii) makes or seeks to make a general assignment for the benefit of its creditors;

(iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;

(c) in the event of a Force Majeure Event affecting Master Distributor's performance of this Agreement for more than thirty (30) consecutive days; or

(d) if, without obtaining Seller's prior written consent, which shall not be unreasonably withheld, (i) Master Distributor sells, leases or exchanges a material portion of Master Distributor's assets, (ii) Master Distributor merges or consolidates with or into another Person, or (iii) a change in Control of Master Distributor's occurs, unless in the case of a merger or consolidation of Master Distributor with another Person, Master Distributor is the surviving entity and has a net worth greater than or equal to its net worth immediately prior to the merger or consolidation.

Any termination under this Section 10.04 is effective on Master Distributor's receipt of Seller's Notice of termination or any later date set out in the Notice.



**Section 10.05 Effect of Expiration or Termination.**

(a) Unless Master Distributor directs otherwise, any termination under Section 10.03 automatically terminates all related Purchase Orders under Article VI. Unless Seller directs otherwise, any termination under Section 10.04 automatically terminates all related Purchase Orders under Article VI.

(b) Upon the expiration or earlier termination of this Agreement:

(i) each Party shall promptly return to the other Party or destroy all documents and tangible materials (and any copies thereof) containing, reflecting, incorporating, or based on the other Party's Confidential Information;

(ii) each Party shall promptly permanently erase all of the other Party's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems. Each Party shall destroy any such copies upon the normal expiration of its backup files; and

(iii) each Party shall promptly certify in writing to the other Party that it has complied with the requirements of this clause.

(c) The Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of the terminating Party's rights or remedies under this Agreement, at law, in equity, or otherwise.

(d) Notwithstanding the provisions of Section 17.03, in the case that this Agreement is terminated for any reason, the Parties shall continue to perform such obligations and provide such services and all fees are paid for such Goods shipped and services performed for the fees set forth under this Agreement as necessary to ensure that the Platform and the Software continue to operate for the life of the respective Goods in same condition as if this Agreement were still fully in effect.

**Section 10.06 Post-Term Resale Period.** On the expiration or earlier termination of this Agreement, Master Distributor may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Goods for a period of six (6) months following the last day of the Term (the "**Post-Term Resale Period**")

**ARTICLE XI  
CONFIDENTIALITY**

**Section 11.01 Scope of Confidential Information.** From time to time during the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") information about its business affairs, goods and services, Forecasts, confidential information, and materials comprising or relating to Intellectual Property Rights, Trade Secrets, third-party confidential information, and other sensitive or proprietary information; such information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" constitutes "**Confidential Information**" hereunder. Confidential Information excludes information that, at the time of disclosure and as established by documentary evidence:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Article XI by the Receiving Party or any of its Representatives;

(b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;

(c) was known by or in the possession of the Receiving Party or its Representatives before being disclosed by or on behalf of the Disclosing Party; or

(d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

**Section 11.02 Protection of Confidential Information.** The Receiving Party shall:

(a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(c) not disclose any such Confidential Information to any Person, except:

(i) to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement;

(ii) pursuant to applicable Law, provided that the Receiving Party shall first provide the Disclosing Party with: (A) prompt Notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order, or other remedy; and (B) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure; or

(iii) pursuant to Master Distributor's obligations under the applicable securities Laws and the regulations of any exchange on which Master Distributor's securities are traded.

The Receiving Party shall be responsible for any breach of this Article XI caused by any of its Representatives. The provisions of this Article XI shall survive termination or expiration of this Agreement for any reason for a period of two (2) years after such termination or expiration. On the expiration or earlier termination of this Agreement, the Receiving Party and its Representatives shall, pursuant to Section 10.05(b), promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement.

## **ARTICLE XII REPRESENTATIONS AND WARRANTIES**

**Section 12.01 Seller's Representations and Warranties.** Seller represents, warrants, and covenants to Master Distributor that:

(a) it is a limited liability company organized, validly existing, and in good standing in the jurisdiction of its organization/formation;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required or purposes of this Agreement, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(c) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement, and to perform its obligations under this Agreement;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of Seller;

(e) the execution, delivery, and performance of this Agreement by Seller will not violate, conflict with, require consent under, or result in any breach or default under:

(i) any of Seller's organizational documents;

(ii) any applicable Law; or

(iii) with or without notice or lapse of time or both, the provisions of any Seller Contract;

(f) when executed and delivered by each of Master Distributor and Seller, this Agreement will constitute the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity; and

(g) it is now and at all times will remain in material compliance with all Laws of the Territory and Seller Contracts applicable to this Agreement, the Goods, the Software, the Platform, and the operation of its business.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 12.01 and 13.01, Seller EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING THE GOODS, SERVICES AND DELIVERABLES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE ARE HEREBY DISCLAIMED.

**Section 12.02 Master Distributor's Representations and Warranties.** Master Distributor represents, warrants, and covenants to Seller that:

(a) it is a corporation duly organized, validly existing, and in good standing in the jurisdiction of its incorporation;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(c) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement, and to perform its obligations under this Agreement;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of Master Distributor;

(e) the execution, delivery, and performance of this Agreement by Master Distributor will not violate, conflict with, require consent under, or result in any breach or default under:

(i) any of Master Distributor's organizational documents;

(ii) any applicable Law; or

(iii) with or without notice or lapse of time or both, the provisions of any Master Distributor Contract; and

(f) when executed and delivered by each of Seller and Master Distributor, this Agreement will constitute the legal, valid, and binding obligation of Master Distributor, enforceable against Master Distributor in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally, or the effect of general principles of equity.

(g) it is now and at all times will remain in material compliance with all Laws of the Territory and Master Distributor Contracts applicable to this Agreement and the operation of its business.

(h) no goods, nor the manufacture, marketing, sale, and use of the goods, or software, nor anything in or contemplated by this Agreement, used in conjunction with the Software, Platform or the Goods infringes on any third-party Intellectual Property Rights.

**ARTICLE XIII  
PRODUCT WARRANTIES**

**Section 13.01 Product Warranties.** Seller warrants to Master Distributor that:

(a) for a period of twelve (12) months from the date of initial delivery of the Good to any End User (the “**Warranty Period**”), such Good will conform with the specifications and documentation provided with the Good and will be free from defects in material and workmanship;

(a) Goods are free of defects in design;

(c) no claim, lien, or action exists or is threatened against Seller that would interfere with the marketing, use, or sale of the Goods;

(d) no Goods, nor the manufacture, marketing, sale, and use of the Goods, the Software, the Platform, nor anything in or contemplated by this Agreement, infringes on any third-party Intellectual Property Rights;

(e) Master Distributor will receive good and valid title to the Goods, free and clear of all encumbrances and liens of any kind;

(f) the Goods are new and do not contain used or reconditioned parts;

(h) the Software and the Platform contain no harmful code, intentionally placed by Seller into the Software or Platform;

(i) it has disclosed to Master Distributor in writing the existence of any third-party code, including open source code, that is included in or is provided in connection with the Goods, the Software, and the Platform, and that Seller and the Goods, the Software, and the Platform are in compliance with all licensing agreements applicable to such third-party code;

Master Distributor may pass-through to End Users all warranties granted by Seller under this Agreement.

**Section 13.02 Remedies for Breach of Warranties.** During the Warranty Period, if Goods do not comply with the warranties in this Agreement, in addition to other remedies available at Law or in this Agreement, Seller shall, at Seller's discretion, repair or replace such Defective Goods. For such Goods, Master Distributor shall ship, at Master Distributor's expense and risk of loss, such allegedly Defective Goods to the nearest authorized Seller location (Hong Kong) and Seller will, at Seller's expense and risk of loss, return any repaired or replaced Good to a location designated by Master Distributor in a timely manner.

**Section 13.03 Recalls.** If any Goods sold to Master Distributor are Defective and a recall campaign is necessary, only Seller may implement such recall campaign Without prejudice to Master Distributor's rights under Section 13.01 and Section 13.02, if a recall campaign is implemented, at Master Distributor's option and Seller's sole cost, Seller shall promptly either repair or replace, or credit or refund Prices for, all such returned Goods .

#### ARTICLE XIV INDEMNIFICATION

**Section 14.01 Seller Indemnification.**

- (a) Subject to the terms and conditions of this Agreement, including those set forth in Section 14.02, Seller shall indemnify, defend, and hold harmless Master Distributor and its Representatives, officers, directors, employees, agents, Affiliates, distributors, resellers, referral partners (and, for each of the foregoing that is an entity, their respective officers, directors, employees, and agents), successors, and permitted assigns (collectively, "**Master Distributor Indemnitees**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by a Master Distributor Indemnitee or End User or awarded against a Master Distributor Indemnitee or End User (collectively, "**Losses**"), relating to, arising out of, or resulting from any Claim of a third party alleging: (a) breach or non-fulfillment of any representation, warranty, or covenant this Agreement by Seller or Seller's Personnel; (b) any negligent or more culpable act or omission of Seller or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (c) any bodily injury, death of any Person, or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Seller or its Personnel; or (d) any failure by Seller or its Personnel to comply with any applicable Laws in the Territory.

- (b) Subject to the terms and conditions of this Agreement, including those set forth in Section 14.02, Master Distributor shall indemnify, defend, and hold harmless Seller and its Representatives, officers, directors, employees, agents, Affiliates, distributors, resellers, referral partners (and, for each of the foregoing that is an entity, their respective officers, directors, employees, and agents), successors, and permitted assigns (collectively, “**Seller Indemnitees**”) against any and all Losses, relating to, arising out of, or resulting from any Claim of a third party alleging: (a) breach or non-fulfillment of any representation, warranty, or covenant this Agreement by Master Distributor or Master Distributor’s Personnel; (b) any negligent or more culpable act or omission of Master Distributor or its Personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (c) any bodily injury, death of any Person, or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Master Distributor or its Personnel; or (d) any failure by Master Distributor or its Personnel to comply with any applicable Laws in the Territory.

**Section 14.02 Exceptions and Limitations on Indemnification.** Notwithstanding anything to the contrary in this Agreement, an indemnifying party is not obligated to indemnify or defend the indemnified party’s Indemnitee against any claim (whether direct or indirect) if such claim or corresponding Losses directly result from the indemnifying party Indemnitee’s or its Personnel’s: (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or (b) bad faith failure to comply with any of its obligations set forth in this Agreement.

**Section 14.03 Seller Intellectual Property Indemnification.** Subject to the terms and conditions of Section 14.04, Seller shall defend (at Seller’s option), hold harmless, and indemnify Master Distributor Indemnitees from and against all Losses arising out of any third-party Claim alleging that any of the Goods, Software, Platform, or Master Distributor’s receipt or use thereof infringes any Intellectual Property Right; *provided* that the indemnification obligations under the foregoing clause shall not apply to infringement actions or claims to the extent that such actions or claims are based on or result from: (i) the use of any Goods, Software, Platform in violation of the terms of this Agreement or the Seller’s Terms of Use for the Goods, Software or Platform, (ii) any alteration or modification of the Goods, Software or Platform by any person other than by, on behalf or at the direction of Seller or its authorized agent, and provided the loss in question would not have occurred, in whole or in part, but for such unauthorized alteration or modification, (iii) any combination, operation or use of the Goods, Software or Platform with equipment or software not supplied, recommended or approved in writing by Seller, unless such use is performed by, on behalf or at the direction of Developer or its affiliates, and provided the loss in question would not have occurred, in whole or in part, but for such unsanctioned use, or (iv) compliance with information, directions, specifications or materials provided by Master Distributor or other sub distributor or reseller. In addition, if such a Claim is or is likely to be made, Seller shall, at its own expense, exercise the following as determined in the Seller’s discretion: (a) obtain for Master Distributor and its End Users the right to continue to use and sell the Goods consistent with this Agreement; (b) modify the Goods, Software, or Platform, as applicable, so they are non-infringing and in compliance with this Agreement; (c) replace the Goods, Software, or Platform with non-infringing ones that comply with this Agreement; or (d) accept the cancellation and return (at Seller’s expense) of infringing Goods, Software, or Platform without Master Distributor or End Users having any cancellation liability and refund to Master Distributor and End Users any amount paid for such infringing Goods. The foregoing shall be Master Distributor’s sole remedy for an infringement claim of Goods, Software, Platform, or Master Distributor’s receipt or use thereof. If the Goods, Software, or Platform, or any part thereof, become, or in Seller’s opinion are likely to become, subject to a Claim that qualifies for intellectual property indemnification coverage under this Section 14.03, Seller shall, at its sole option and expense, Notify Master Distributor and End Users to cease using such Goods. Master Distributor shall Notify Seller of third-party Claims against Master Distributor and reasonably cooperate in the investigation, settlement, and defense of such Claims at Seller’s expense.

**Section 14.04 Exceptions to Seller's Intellectual Property Indemnification.** Notwithstanding anything to the contrary in this Agreement, Seller is not obligated to indemnify or defend any Master Distributor Indemnitee against any claim under Section 14.03 if such claim or corresponding Losses arise out of or result from the circumstances described in Section 14.02(a) or Section 14.02(b).

**ARTICLE XV  
LIMITATION OF LIABILITY**

**Section 15.01 No Liability for Consequential or Indirect Damages.** EXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY NOR ITS REPRESENTATIVES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY MASTER DISTRIBUTOR OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. EXCEPT FOR LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, NEITHER UNDER NO CIRCUMSTANCES WHATSOEVER WILL EITHER PARTY BE LIABLE FOR ANY MATTER OR MATTERS THAT WILL EXCEED IN THE AGGREGATE THE AMOUNTS PAID OR PAYABLE FOR GOODS SHIPPED OR SERVICES PERFORMED TO SELLER THE PRECEDING 12 MONTHS.

**ARTICLE XVI  
INSURANCE OBLIGATIONS**

**Section 16.01 Insurance.** Without limiting Seller's indemnification obligations under this Agreement, during the Term, Seller shall, at its own expense, maintain and carry in full force and effect at least the following types of insurance coverage, subject to the requirements set forth in Section 16.02: (a) commercial general liability with limits of at least million dollars (\$1,000,000) per occurrence, including bodily injury, property damage covering the Goods, and advertising liability, which policy will also include contractual liability coverage insuring the activities of Seller under this Agreement; (b) worker's compensation with limits no less than the minimum amount required by applicable law; and (c) umbrella (excess) liability for the coverage in Section 16.01(a), with limits of one million dollars (\$1,000,000) per occurrence.



**Section 16.02 Insurance Contract Requirements.** Seller shall ensure that all insurance policies required pursuant to Section 16.01: (a) are issued by insurance companies reasonably acceptable to Master Distributor; (b) provide that such insurance carriers give Master Distributor at least thirty (30) days' prior Notice of cancellation or non-renewal of policy coverage, provided that, prior to such cancellation, Seller has new insurance policies in place that meet the requirements of this Article XVI; (c) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Seller shall be excess and non-contributory; (d) name Master Distributor and Master Distributor's Affiliates, including, in each case, all successors and permitted assigns, as additional insureds; and (e) waive any right of subrogation of the insurers against Master Distributor or any of its Affiliates.

**Section 16.03 Insurance Certificates.** On Master Distributor's reasonable request, Seller shall provide Master Distributor with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Article XVI, and shall not do anything to invalidate such insurance. This Section 16.03 shall not be construed in any manner as waiving, restricting, or limiting the liability of either Party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold the other harmless under this Agreement).

## ARTICLE XVII MISCELLANEOUS

**Section 17.01 Further Assurances.** Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

**Section 17.02 Entire Agreement.** Subject to Article III, this Agreement, including and together with any related exhibits, schedules, attachments, and appendices, together with the Purchase Orders, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

**Section 17.03 Survival.** Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) Articles VIII, IX, XI, XIII, XIV, XV and Sections 10.05, 10.06, 17.04, 17.13, and 17.14 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement. All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement.

**Section 17.04 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**", and with the correlative meaning, "**Notify**") 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 a nationally recognized overnight courier (return receipt requested); (c) on the date sent by email 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 first class 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 17.04).

Notice to Master Distributor:

Creative Realities, Inc.  
13100 Magisterial Drive, Suite 100  
Louisville, KY 40223  
Attn: Will Logan, Chief Financial Officer  
  
E-mail: will.logan@cri.com

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

Maslon LLP  
3300 Wells Fargo Center  
90 South 7<sup>th</sup> Street  
Minneapolis, MN 55402  
Attn: Bradley Pederson  
  
E-mail: bradley.pederson@maslon.com

Notice to Seller:

InRealty LLC  
N4372 Snyder Lake Road  
Neillsville, WI 54456  
  
E-mail:  
ron.levac@inreality.com

**Section 17.05 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section 17.06 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 a determination that any term or provision is invalid, illegal, or unenforceable, this Agreement shall be modified to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 17.07 Amendment and Modification.** No amendment to or modification of this Agreement or any Purchase Order is effective unless it is in writing and signed by an authorized Representative of each Party.

**Section 17.08 Waiver.** No waiver by any Party of any provision of this Agreement or any Purchase Order shall be effective unless it is in writing and signed by the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or (ii) any act, omission, or course of dealing between the Parties.

**Section 17.09 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

**Section 17.10 Assignment.** Except as otherwise set forth in Section 2.02, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the other Party's prior written consent. Any purported assignment or delegation in violation of this Section 17.10 shall be null and void.

**Section 17.11 Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

**Section 17.12 No Third-Party Beneficiaries.** Subject to Section 17.12(b), this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 17.13 Dispute Resolution.** Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "**Dispute**"), shall be submitted for negotiation and resolution to the Chief Executive Officer of Seller (or to such other person of equivalent or superior position designated by Seller in a written Notice to Master Distributor) and the Chief Executive Officer of Master Distributor (or to such other person of equivalent or superior position designated by Master Distributor in a written Notice to Seller), by delivery of written Notice (each, a "**Dispute Notice**") from either Party to the other Party. Such persons shall negotiate in good faith to resolve the Dispute. If the Parties cannot resolve any Dispute within thirty (30) days after delivery of the applicable Dispute Notice, the Dispute shall be resolved exclusively by an action to be held in the federal and state courts sitting in the location of the defendant in such matter shall have exclusive jurisdiction. Such arbitration shall be commenced by the sending of a written notice by the aggrieved Party to the other Party, setting forth a statement of the grievance. The mailing of such notice shall commence the arbitration, and the award or decision in such arbitration shall be binding upon the Parties. Such award or decision may be entered as a judgment in such court or courts as may have jurisdiction in the matter. The losing Party in any action to enforce its rights or settle any disputes under this Agreement shall pay to the prevailing Party all of its costs and expenses paid or incurred in connection with such suit or action, including, without limitation, the prevailing Party's reasonable attorneys' fees, costs and expenses. THE PARTIES HEREBY INTENTIONALLY, KNOWINGLY AND VOLUNTARILY WAIVE ALL OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY PROVISION CONTAINED IN THIS AGREEMENT.

**Section 17.14 Governing Law.** This Agreement, including all Purchase Order documents and exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to its choice or conflict of laws rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**Section 17.15 Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 17.16 Force Majeure.** Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events include, without limitation, natural disasters, embargoes, explosions, riots, wars, or acts of terrorism, epidemics, pandemics (excluding the COVID-19 pandemic in effect as of the date hereof), or any action, order, or other response by any federal, state, or local government authority related to any of the foregoing that directly prevents a Party from performing its obligations) (each, a "**Force Majeure Event**"). Either party's financial inability to perform, changes in cost or availability of materials, components, or services, market conditions or supplier actions or contract disputes will not excuse performance by such party under this Section 17.16. Each party shall give the other prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Each party shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.

**Section 17.17 No Franchise or Business Opportunity Agreement.** The Parties are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, employment, partnership, agency relationship, business opportunity, or franchise between Seller and Master Distributor. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of its personnel under this Agreement and will be solely responsible for their supervision, daily direction, and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Master Distributor has the sole discretion to determine Master Distributor's methods of operation, Master Distributor's accounting practices, the types and amounts of insurance Master Distributor carries, Master Distributor's personnel practices, Master Distributor's marketing and promotion, Master Distributor's customers, and Master Distributor's service areas and methods. The relationship created hereby between the parties is solely that of supplier and distributor. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the parties, then the parties shall negotiate in good faith to modify this Agreement so as to effect the parties' original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a distribution agreement and not a franchise or business opportunity agreement.

**Section 17.18 Non-Solicitation.** Neither party will solicit and/or offer employment to or hire as a contractor for service, nor accept for employment or hire as a contractor for service, the other party's personnel, including independent contractors during the Term of this Agreement and for a period continuing for twelve (12) months subsequent to the termination of the Agreement inclusive of any extension thereof; provided, however, that the foregoing restriction shall not apply to solicitations directed at the public in general.

*[Signature Page follows]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**CREATIVE REALITIES, INC.**

By: /s/ Richard Mills

Name: Richard Mills

Its: Chief Executive Officer

**INREALITY, LLC**

By: /s/ Ron Levac

Name: Ron Levac

Its: Chief Executive Officer

**ADDENDUM A**  
TERRITORY ADDENDUM  
(United States)

**ADDENDUM B**  
TERRITORY ADDENDUM  
(Canada)



**SCHEDULE 1**  
**LIST OF GOODS**

**SCHEDULE 2**  
**BILLING AND SUPPORT FOR**  
**OUT-OF-SCOPE PRODUCTS**

**SCHEDULE 3**  
**MASTER DISTRIBUTOR'S TRADEMARKS**

**SCHEDULE 4**  
**SELLER'S TRADEMARKS**

**EXHIBIT A**  
**SERVICE LEVEL AGREEMENT**