

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): **October 2, 2023**

**NAUTICUS ROBOTICS, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**001-40611**

(Commission File Number)

**87-1699753**

(IRS Employer  
Identification No.)

**17146 Feathercraft Lane, Suite 450, Webster, TX 77598**  
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(281) 942-9069**

**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))

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock	KITT	The Nasdaq Stock Market LLC
Warrants	KITTW	The Nasdaq Stock Market LLC

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.

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

### **Merger Agreement**

On October 2, 2023, Nauticus Robotics, Inc., a Delaware corporation (“Nauticus”), entered into an Agreement and Plan of Merger (as it may be amended, supplemented or otherwise modified from time to time, the “Merger Agreement”) with 3D Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Nauticus (“Merger Sub”), and 3D at Depth, Inc., a Delaware corporation (“3DAD”, and together with Nauticus and Merger Sub, each a “Party” and collectively the “Parties”). Pursuant to the Merger Agreement, and upon the terms and subject to the conditions thereof, a merger between Nauticus and 3DAD will be effected through the merger of Merger Sub with and into 3DAD, with 3DAD surviving the merger as a wholly owned subsidiary of Nauticus (the “Merger”, and together with the other transactions contemplated by the Merger Agreement and the other agreements contemplated thereby, the “Transactions”). The board of directors of Nauticus (the “Board”) has unanimously (i) approved the Merger Agreement and the Transactions and (ii) resolved to recommend the approval and adoption of the Merger Agreement and the Transactions to the stockholders of Nauticus (“Nauticus Stockholders”).

### ***Treatment of Securities***

**Capital Stock of Merger Sub.** Each share of the common stock, par value \$0.01 per share, of Merger Sub (“Merger Sub Common Stock”) issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement) will be converted into and become one validly issued, fully paid and nonassessable share of common stock of 3DAD, as the surviving corporation in the Merger (“Surviving Corporation Common Stock”), so that, immediately following the Effective Time, Nauticus shall be the holder of all of the issued and outstanding shares of Surviving Corporation Common Stock.

**3DAD Common Stock.** Each share of the common stock, par value \$0.01 per share, of 3DAD (“3DAD Common Stock”) issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined below)) will be converted into the right to receive the applicable Per Share Equity Consideration (as defined below). At the Effective Time, all such shares of 3DAD Common Stock will no longer be outstanding, will be cancelled and retired automatically and will cease to exist. Each holder of a share certificate representing a share of such 3DAD Common Stock will cease to have any rights with respect thereto, except the right to receive Per Share Equity Consideration upon the surrender of such share certificate (or other evidence of ownership reasonably acceptable to Nauticus).

**3DAD Dissenting Shares.** Each share of 3DAD Common Stock that is issued and outstanding immediately prior to the Effective Time, the holder of which has not voted in favor of the Merger or consented thereto in writing and who has provided 3DAD with a written demand for appraisal for such share in accordance with the Delaware General Corporation Law (the “DGCL”) (in each case, a “Dissenting Share”), will not be converted into or represent the right to receive the Per Share Equity Consideration, except as set forth below. Holders shall instead be entitled to receive payment of the appraised value of Dissenting Shares held by them in accordance with the provisions of Section 262 of the DGCL, except that all Dissenting Shares held by stockholders of 3DAD who shall have failed to perfect or who effectively shall have withdrawn or otherwise lost their rights to appraisal of such shares of 3DAD Common Stock under Section 262 of the DGCL shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Per Share Equity Consideration pursuant to the immediately preceding paragraph. 3DAD shall give Nauticus prompt notice of any written demands received by 3DAD for appraisal, and Nauticus shall conduct all negotiations and proceedings with respect to such demands (provided that Nauticus shall keep 3DAD reasonably apprised of the same). 3DAD shall not, except with the prior written consent of Nauticus, voluntarily make any payment with respect to any demands for appraisal or settle or offer to settle any such demands.

**3DAD Options.** No fewer than five days prior to the Closing Date (as defined in the Merger Agreement), 3DAD shall have caused all options to purchase shares of the 3DAD Common Stock (“Company Options”) granted under any Company Stock Plan (as defined in the Merger Agreement) that are outstanding and unexercised to have accelerated so as to be fully vested and exercisable (the “Acceleration”). Upon such Acceleration, 3DAD shall have caused each holder of Company Options to have exercised such Company Options (the “Mandatory Exercise”) by 3DAD’s administration of a cashless exercise program, such that, prior to the Effective Time, each holder of Company Options becomes a holder of the applicable number of shares of 3DAD Common Stock in accordance with the Company Stock Plan; provided, that each holder of Company Options that chooses a cashless exercise shall exercise such Company Options as follows: (i) 3DAD shall offset against the exercise a number of shares of 3DAD Common Stock which, when valued at Fair Market Value (as defined in the Company Stock Plan) on the date of exercise, equals the exercise price of such Company Options, and (ii) 3DAD shall withhold from the 3DAD Common Stock issued upon such exercise, a number of shares of 3DAD Common Stock which, when valued at Fair Market Value (as defined in the Company Stock Plan) on the date of exercise, equals the total tax obligations required to be withheld or paid pursuant to any federal, state or local tax or revenue laws or regulations, as may be determined by 3DAD. A holder of Company Options may also exercise its Company Options by means of payment of cash to 3DAD, in which case, the exercise of such Company Options shall be administered in accordance with the Company Stock Plan, including with respect to any applicable withholding. In each case of a cashless or cash exercise as described in this paragraph, 3DAD shall deliver a schedule (the “Company Option Proposed Schedule”) of its proposed calculations (broken out by Company Option holder) to Nauticus at least five business days prior to the Mandatory Exercise, and Nauticus shall have the right to review and approve the number of shares of 3DAD Common Stock issued to each such holder of Company Options (as so approved, the “Company Option Final Schedule”). As of the Effective Time, all unexercised Company Options, if any exist, shall be cancelled and each holder of Company Options shall cease to have any rights with respect to such Company Options, except as set forth in Section 3.2 of the Merger Agreement. The Company Options shall not rollover into the Nauticus Robotics, Inc. 2022 Omnibus Incentive Plan, as in effect as of the Closing Date. No options to purchase shares of common stock, \$0.0001 par value per share, of Nauticus (“Nauticus Common Stock”) shall be issued, nor shall any shares be reserved, in respect of any Company Options.

### ***Merger Consideration***

**Closing Adjustments.** The Base Equity Value (as defined in the Merger Agreement) will be increased, if and as applicable, by the amount of the Net Working Capital (as defined in the Merger Agreement), as set forth on the Final Closing Statement (as defined in the Merger Agreement), that exceeds the Target Working Capital (as defined in the Merger Agreement) by more than \$37,500, from the first dollar.

The Base Equity Value will be decreased, if and as applicable, dollar for dollar by (i) the difference between the Net Working Capital and the Target Working Capital, if the Target Working Capital exceeds the Net Working Capital by \$37,500 or more, (ii) the dollar amount by which the Outstanding Company Fees (as defined in the Merger Agreement) exceed the Cash Amount, (iii) the dollar amount by which the Company Debt (as defined in the Merger Agreement) exceeds the Permitted Company Debt Amount (as defined in the Merger Agreement), (iv) the RWI Underwriting Fee Amount (as defined in the Merger Agreement), (v) the RWI Broker Fee Amount (as defined in the Merger Agreement) and (vi) 50% of the RWI Premium Amount (as defined in the Merger Agreement).

**Merger Consideration.** The “Per Share Equity Consideration” means, with respect to any share of 3DAD Common Stock held by a 3DAD stockholder which is issued and outstanding immediately prior to the Effective Time, a number of shares of Nauticus Common Stock equal to (a) the Per Share Equity Consideration Value (as defined below) divided by (b) the 20-day VWAP (as defined in the Merger Agreement) calculated pursuant to Annex II of the Merger Agreement, which is stipulated by the Parties to be \$2.04.

The “Per Share Equity Consideration Value” means (a) the Base Equity Value (as adjusted, if applicable, as set forth above) divided by (b) the total number of shares of 3DAD Common Stock issued and outstanding as of immediately prior to the Effective Time.

At the consummation of the Merger (the “Closing”), and upon surrender by the holder thereof of share certificates representing ownership of the 3DAD Common Stock (or other proof of ownership reasonably satisfactory to Nauticus), Nauticus shall cause to be issued to each holder of 3DAD Common Stock who participates in the Closing on the Closing Date (each, a “Closing Seller”) the Per Share Equity Consideration for each share of 3DAD Common Stock held by such Closing Seller (as defined in the Merger Agreement). Any Outstanding Company Fees (as defined in the Merger Agreement) will be paid by Nauticus in accordance with the applicable payment terms.

As soon as reasonably practicable following the date of the Merger Agreement, 3DAD (on behalf of Nauticus) shall deliver to each holder of 3DAD Common Stock that is not a Closing Seller (i) a letter of transmittal, and (ii) instructions for use in surrendering share certificates in exchange for the Per Share Equity Consideration. No interest will be paid or accrued on the Per Share Equity Consideration payable upon the surrender of any share certificate.

### ***Representations and Warranties***

The Merger Agreement includes representations and warranties of the Parties that are customary for transactions of this type, including with respect to the operations of Nauticus and 3DAD; provided, however, that, other than in the case of Fraud (as defined in the Merger Agreement), none of such representations or warranties, nor any covenants, obligations or other agreements of 3DAD or Nauticus in the Merger Agreement or any other documents delivered pursuant to the Merger Agreement, shall survive the Closing (except for any covenants or agreements contained therein that expressly apply after the Closing).

Nauticus has obtained and bound a buyer-side representations and warranties insurance policy (the “RWI Policy”). Other than for claims based on Fraud, gross negligence or intentional misconduct, or claims for specific performance, the sole and exclusive remedy of Nauticus arising out of or resulting from the Merger Agreement and the Transactions shall be in accordance with, and limited solely to, the RWI Policy.

### ***Covenants***

The Merger Agreement includes customary and additional covenants and agreements of the Parties, including, among others, those relating to: the conduct of the business of 3DAD and its United Kingdom subsidiary; the Parties' use of reasonable, good faith efforts to obtain all required consents and regulatory approvals, to satisfy all conditions to their respective obligations under the Merger Agreement and to cause the Transactions to be effected on or prior to the Outside Date (as defined below); the preparation and delivery to Nauticus by 3DAD of supplements and/or amendments to its disclosure schedules, with respect to matters first arising after the date of the Merger Agreement; and qualifying the Transactions for the Intended Tax Treatment (as defined in the Merger Agreement), in addition to covenants and agreements regarding other tax-related matters. Further, the Merger Agreement contains a customary non-solicitation provision prohibiting 3DAD and its affiliates from directly or indirectly initiating, soliciting or encouraging, or entering into negotiations or agreements with respect to, certain types of extraordinary transactions with respect to 3DAD that may prevent or materially delay the performance by 3DAD of any of its obligations under the Merger Agreement or the consummation of the Transactions contemplated thereby.

### ***Conditions to Closing***

The consummation of the Transactions is generally subject to the satisfaction or waiver, as applicable, of customary closing conditions including: all requisite approvals imposed by any governmental entity having been obtained; and the absence of injunctions and/or other legal restraints preventing the Transactions and of statutory impediments relating to the Transactions. The obligations of Nauticus and Merger Sub to consummate the Transactions are subject to certain customary conditions, including, but not limited to: (i) the accuracy of the representations and warranties of 3DAD, (ii) the performance in all material respects by 3DAD of its obligations and covenants under the Merger Agreement and with respect to the Transactions, (iii) no Material Adverse Effect (as defined in the Merger Agreement) having occurred since the Latest Balance Sheet Date (as defined in the Merger Agreement), (iv) receipt of all required consents and approvals (including the Company Requisite Approval (as defined in the Merger Agreement)), (v) the approval by the Board of the Merger Agreement and the Transactions (vi) the approval of the Transactions by the stockholders of Nauticus (the "Buyer Stockholder Approval") in accordance with the terms of the Merger Agreement, and (vii) receipt of written resignations of certain directors and officers of 3DAD. The obligations of 3DAD to consummate the Transactions also are subject to certain customary conditions, including, but not limited to: (i) the accuracy of the representations and warranties of Nauticus and Merger Sub, (ii) the performance in all material respects by Nauticus and Merger Sub of their obligations and covenants under the Merger Agreement and with respect to the Transactions, (iii) no Material Adverse Effect having occurred since the Latest Balance Sheet Date, (iv) the approval of the stockholders of 3DAD and (v) the effectiveness of a Registration Statement on Form S-4.

### ***Termination***

The Merger Agreement provides for customary and certain other termination rights in favor of Nauticus and 3DAD, including, without limitation, the right of either such Party to terminate the Merger Agreement if certain conditions to consummation of the Transactions are not satisfied or waived (to the extent they may be waived) within 180 days from the date of the Merger Agreement (the "Outside Date"); in the event of certain uncured breaches by a Party; or if the Buyer Stockholder Approval is not obtained. In addition, Nauticus has the right to terminate the Merger Agreement for any breach of the Company Stockholder Support Agreement (as defined below) on the part of a holder of 3DAD Common Stock party thereto.

### ***Pre-Closing Tax Indemnity***

Subject to the other terms and conditions of Article IX of the Merger Agreement, 3DAD shall indemnify and defend Nauticus against, and shall hold Nauticus harmless from and against, and shall pay and reimburse Nauticus for, any and all Losses (as defined in the Merger Agreement) incurred or sustained by, or imposed upon, Nauticus based upon, arising out of, with respect to or by reason of Company Taxes (as defined in the Merger Agreement) that are attributable to any Pre-Closing Tax Period (as defined in the Merger Agreement), including that portion of any Straddle Period (as defined in the Merger Agreement) ending on the Closing Date.

## **Certain Related Agreements**

### ***Company Stockholder Support Agreement***

Contemporaneously with the execution and delivery of the Merger Agreement, in connection with the Merger, certain 3DAD stockholders have entered into a Company Stockholder Support Agreement (the “Company Stockholder Support Agreement”) with Nauticus, pursuant to which, among other things, each such 3DAD stockholder has agreed to vote or cause to be voted (including by class vote and/or written consent, if applicable) the Subject Shares (as defined in the Company Stockholder Support Agreement) in favor of the approval of the Merger Agreement and the Transactions.

### ***Lock-Up Agreements***

Contemporaneously with the execution and delivery of the Merger Agreement, in connection with the Merger, certain 3DAD stockholders have entered into Lock-Up Agreements (each, a “Lock-Up Agreement”) with Nauticus, pursuant to which, among other things, such 3DAD stockholders have agreed, subject to certain limited exceptions, not to transfer, assign or sell any of the shares of Nauticus Common Stock obtained by them pursuant to the Merger Agreement for a period of either 90 or 180 days after the Closing Date, as applicable.

### ***Direction Designation Letter Agreement***

Contemporaneously with the execution and delivery of the Merger Agreement, in connection with the Merger, Nauticus and Schlumberger Technology Corporation (“SLB”) have entered into a letter agreement (the “Director Designation Letter Agreement”), pursuant to which, among other things, Nauticus has agreed to cause an individual designated by SLB to be appointed to, and otherwise remain on, subject to the applicable stockholder vote, the Board.

The foregoing descriptions of the Merger Agreement and the related agreements and other Transactions contemplated thereby are only summaries, do not purport to be complete and are subject to, and qualified in their entirety, by reference to the Merger Agreement, the Company Stockholder Support Agreement and the Lock-Up Agreements. Copies of the Merger Agreement, Company Stockholder Support Agreement, form of Lock-Up Agreement for large 3DAD stockholders, form of Lock-Up Agreement for minority 3DAD stockholders, and the Direction Designation Letter Agreement are attached hereto as Exhibits 2.1, 10.1, 10.2, 10.3 and 10.4, respectively, and are incorporated herein by reference.

## **Important Information for Investors and Stockholders**

This Current Report on Form 8-K relates to a proposed transaction between Nauticus and 3DAD. This Current Report on Form 8-K does not constitute an offer to sell or exchange, or the solicitation of an offer to buy or exchange, any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, sale or exchange would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. Nauticus intends to file a registration statement on Form S-4 with the U.S. Securities and Exchange Commission (the “SEC”), which will include a document that serves as a prospectus and proxy statement of Nauticus, referred to as a proxy statement/prospectus. A proxy statement/prospectus will be sent to all Nauticus stockholders. Nauticus will also file other documents regarding the proposed transaction with the SEC. Before making any voting decision, investors and security holders of Nauticus are urged to read the registration statement, the proxy statement/prospectus and all other relevant documents filed or that will be filed with the SEC in connection with the proposed transaction as they become available because they will contain important information about the proposed transaction.

Investors and security holders will be able to obtain free copies of the registration statement, the proxy statement/prospectus and all other relevant documents filed or that will be filed with the SEC by Nauticus through the website maintained by the SEC at [www.sec.gov](http://www.sec.gov).

## **Participants in the Solicitation**

Nauticus, 3DAD and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from Nauticus’ stockholders in connection with the proposed transaction. A list of the names of the respective directors and executive officers of Nauticus and 3DAD and information regarding their interests in the business combination will be contained in the proxy statement/prospectus when available. You may obtain free copies of these documents as described in the preceding paragraph.

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of any securities in any state or jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of such other jurisdiction.

## Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the “Act”), and are intended to enjoy the protection of the safe harbor for forward-looking statements provided by the Act as well as protections afforded by other federal securities laws. Such forward-looking statements include, but are not limited to: the expected timing of product commercialization or new product releases; customer interest in Nauticus’ products; estimated 2023 operating results and use of cash; and Nauticus’ use of and needs for capital. Generally, statements that are not historical facts, including statements concerning possible or assumed future actions, business strategies, events, or results of operations, are forward-looking statements. These statements may be preceded by, followed by, or include the words “believes,” “estimates,” “expects,” “projects,” “forecasts,” “may,” “will,” “should,” “seeks,” “plans,” “scheduled,” “anticipates,” “intends,” or “continue” or similar expressions, but the absence of these words does not mean a statement is not forward looking. Indications of, and guidance or outlook on, future earnings, dividends or financial position or performance are also forward-looking statements. Forward-looking statements inherently involve risks and uncertainties that may cause actual events, results, or performance to differ materially from those indicated by such statements. These forward-looking statements are based on Nauticus’ management’s current expectations and beliefs, as well as a number of assumptions concerning future events. There can be no assurance that the events, results, or trends identified in these forward-looking statements will occur or be achieved. Forward-looking statements speak only as of the date they are made, and Nauticus is not under any obligation and expressly disclaims any obligation, to update, alter, or otherwise revise any forward-looking statement, whether as a result of new information, future events, or otherwise, except as required by law. Readers should carefully review the statements set forth in the reports which Nauticus has filed or will file from time to time with the Securities and Exchange Commission (the “SEC”) for a more complete discussion of the risks and uncertainties facing the Company and that could cause actual outcomes to be materially different from those indicated in the forward-looking statements made by the Company, in particular the sections entitled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in documents filed from time to time with the SEC, including Nauticus’ Annual Report on Form 10-K, filed with the SEC on March 28, 2023 and Quarterly Report on Form 10-Q, filed with the SEC on August 14, 2023. Should one or more of these risks, uncertainties, or other factors materialize, or should assumptions underlying the forward-looking information or statements prove incorrect, actual results may vary materially from those described herein as intended, planned, anticipated, believed, estimated, or expected. The documents filed by Nauticus with the SEC may be obtained free of charge at the SEC’s website at [www.sec.gov](http://www.sec.gov).

### Item 7.01 Regulation FD Disclosure.

On October 3, 2023, Nauticus and 3DAD issued a press release announcing their entry into the Merger Agreement. The press release is attached hereto and furnished as Exhibit 99.1.

The information provided in this Item 7.01, including the accompanying Exhibit 99.1, shall be deemed “furnished” and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), or otherwise subject to the liabilities of such section, nor shall it be incorporated by reference in any filing made by Nauticus pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, regardless of the general incorporation language of such filing, except as expressly set forth by specific reference in such filing.

### Item 9.01 Financial Statements and Exhibits.

#### (d) Exhibits.

<b>Exhibit</b>	<b>Description</b>
2.1*	<a href="#">Agreement and Plan of Merger, dated as of October 2, 2023, by and among Nauticus Robotics, Inc., 3D Merger Sub, Inc. and 3D at Depth, Inc.</a>
10.1*	<a href="#">Company Stockholder Support Agreement, dated as of October 2, 2023</a>
10.2	<a href="#">Form of Lock-Up Agreement (large stockholders of 3DAD Form A)</a>
10.3	<a href="#">Form of Lock-Up Agreement (large stockholders of 3DAD Form B)</a>
10.4	<a href="#">Form of Lock-Up Agreement (minority stockholders of 3DAD) (included as Exhibit F to Exhibit 2.1)</a>
10.5	<a href="#">Director Designation Letter Agreement, dated as of October 2, 2023, by and between Nauticus Robotics, Inc. and Schlumberger Technology Corporation</a>
99.1	<a href="#">Press release, dated October 3, 2023</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Certain exhibits and/or schedule(s) to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). Nauticus agrees to furnish supplementally a copy of all omitted exhibits and schedules to the SEC upon its request.

**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.

Dated: October 6, 2023

**Nauticus Robotics, Inc.**

By: /s/ Nicolaus Radford

Name: Nicolaus Radford

Title: Chief Executive Officer

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**NAUTICUS ROBOTICS, INC.,**

**3D MERGER SUB, INC.,**

**and**

**3D AT DEPTH, INC.**

**Dated as of October 2, 2023**

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#### ANNEXES AND EXHIBITS

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Exhibit C	Support Agreement Stockholders
Exhibit D	Large Stockholders
Exhibit E	Small Stockholders
Exhibit F	Form of Small Stockholder Lock-Up Agreement

## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “Agreement”) is entered into as of October 2, 2023, by and among (i) Nauticus Robotics, Inc., a Delaware corporation (“Buyer”), (ii) 3D Merger Sub, Inc., a Delaware corporation (“Merger Sub”), and (iii) 3D at Depth, Inc., a Delaware corporation (the “Company”). Buyer, Merger Sub and the Company are sometimes referred to herein individually as a “Party” and, collectively, as the “Parties.”

**WHEREAS**, Merger Sub is a wholly owned first tier Subsidiary of Buyer and was formed for the sole purpose of the Merger;

**WHEREAS**, Buyer, Merger Sub and the Company intend to effect a merger (the “Merger”) of Merger Sub with and into the Company in accordance with this Agreement and the Delaware General Corporation Law (the “DGCL”);

**WHEREAS**, upon consummation of the Merger, Merger Sub will cease to exist and the Company will become a wholly owned first tier subsidiary of Buyer;

**WHEREAS**, this Agreement and the Merger have been approved by the respective boards of directors of Buyer, Merger Sub and the Company;

**WHEREAS**, contemporaneously with the execution and delivery of this Agreement, in connection with the Merger, certain Company Stockholders listed on Exhibit C have entered into a support agreement (the “Company Stockholder Support Agreement”) with the Buyer;

**WHEREAS**, contemporaneously with the execution and delivery of this Agreement, in connection with the Merger, certain Company Stockholders listed on Exhibit D have entered into Lock-Up Agreements with the Buyer with respect to the Buyer Common Stock such Company Stockholders will receive as consideration in the Merger (each, a “Large Stockholder Lock-Up Agreement”);

**WHEREAS**, upon the consummation of the Merger, certain Company Stockholders listed on Exhibit E will enter into Lock-Up Agreements in the form set forth on Exhibit F with the Buyer (each, a “Small Stockholder Lock-Up Agreement” and, together with the Large Stockholder Lock-Up Agreements, the “Lock-Up Agreements”);

**WHEREAS**, based upon information made available to Buyer by the Company, Buyer reasonably believes that thirty-five (35) or fewer of the recipients of Buyer Common Stock in the Merger are not accredited investors (as such term is used in Regulation D promulgated under the Securities Act) and that the issuance of all shares of Buyer Common Stock in the Merger will validly qualify for an exemption under Regulation D from the registration and prospectus delivery requirements of the Securities Act and exemptions under state “blue-sky” Laws;

**WHEREAS**, this Agreement has been approved by the written consent of stockholders holding at least a majority of the outstanding voting stock of the Company in accordance with Section 228 of the DGCL; and

**WHEREAS**, the Parties desire to make certain representations, warranties, covenants and agreements specified in this Agreement in connection with the Merger and the other transactions contemplated by this Agreement.

## AGREEMENT

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

### ARTICLE I DEFINITIONS

The following terms, as used herein, have the following meanings:

“Acceleration” has the meaning set forth in Section 3.2(a).

“Affiliate” means, with respect to any Person, any Person that, directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

“Agreement” has the meaning set forth in the introductory paragraph hereto.

“Balance Sheet” has the meaning set forth in Section 4.7.

“Base Equity Value” means THIRTY-FOUR MILLION DOLLARS (\$34,000,000).

“Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in Colorado or Texas.

“Buyer” has the meaning set forth in the introductory paragraph hereto.

“Buyer Ancillary Documents” has the meaning set forth in Section 5.4(a).

“Buyer Common Stock” means common stock, \$0.0001 par value per share, of the Buyer, trading under the symbol “KITT” (and any stock or other securities into which such shares of common stock may be converted or for which they may be exchanged).

“Buyer Disclosure Schedules” has the meaning set forth in ARTICLE V.

“Buyer Incentive Plan” means the Nauticus Robotics, Inc. 2022 Omnibus Incentive Plan as in effect as of the Closing Date.

“Buyer Public Warrants” means the publicly traded warrants to buy Buyer Common Stock trading under the symbol “KITTW”.

“Buyer Stockholder Approval” has the meaning set forth in Section 5.4(b).

“Buyer Update” has the meaning set forth in Section 6.13(b).

“CARES Act” means the Coronavirus Aid, Relief and Economic Security Act, as signed into Law by the President of the United States on March 27, 2020, as amended by subsequent legislation, including the American Rescue Plan Act of 2021 as signed into Law by the President of the United States on March 11, 2021.

“Cash Amount” means, as of immediately prior to the Closing, an amount of Dollars (expressed as a positive or negative number, as applicable) equal to the cash and cash equivalents (to the extent convertible into cash within ninety (90) days) of the Company, *minus* the aggregate amount of any outstanding checks, transfers and drafts, except to the extent there has not been a corresponding reduction of current liabilities, Company Debt or Outstanding Company Expenses on account thereof, *plus* any deposits in transit to the extent there has been a corresponding reduction of current assets on account thereof, in each case determined consistent with historical practices of the Company, and excluding Restricted Cash, if any.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any rules or regulations promulgated thereunder.

“Certificate of Merger” has the meaning set forth in Section 2.2.

“Certificates” has the meaning set forth in Section 3.3(a).

“Closing” has the meaning set forth in Section 2.3.

“Closing Date” has the meaning set forth in Section 2.3.

“Closing Seller” means each holder of Company Common Stock who participates in the Closing on the Closing Date.

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

“Company” has the meaning set forth in the introductory paragraph hereto.

“Company Ancillary Documents” has the meaning set forth in Section 4.3.

“Company Benefit Plan” means each plan, fund, program, agreement or arrangement (i) with respect to which the Company Group has any Liability and (ii) that provides employee benefits or for the remuneration, direct or indirect, of employees, former employees, directors, officers, consultants, independent contractors, contingent workers or leased employees of the Company Group or any Person that together with the Company Group would be a single employer within the meaning of Section 414 of Code (whether written or oral), including, without limitation, each “welfare” plan (within the meaning of Section 3(1) of ERISA) and each “pension” plan (within the meaning of Section 3(2) of ERISA).

“Company Board” means the board of directors of the Company.

“Company Common Stock” means the common stock, par value \$0.01 per share, of the Company.

“Company Debt” means, with respect to the Company, but without duplication, (a) all indebtedness of the Company for borrowed money and all accrued interest thereon (other than accounts payable in the ordinary course of business), including without limitation, arising from loans, advances, letters of credit, surety bonds and obligations related thereto; (b) all obligations of the Company for the deferred purchase price of assets, property or services other than operating or other leases of property (except as set forth in (d)), and other non-ordinary course third-party payables, accrued expenses and liabilities to current and/or former employees incurred in the ordinary course of business; (c) all obligations of the Company evidenced by notes, bonds, debentures, hedging and swap arrangements or Contracts or other similar instruments; (d) all lease obligations of the Company classified as capital leases in accordance with GAAP; (e) all accrued and unpaid interest on any Company Debt referred to in clauses (a) through (d) above through the Closing Date and any prepayment penalties, premiums, consent or other fees, breakage costs on interest rate swaps and any other hedging obligations (including, but not limited to, foreign exchange contracts) or other costs incurred in connection with the repayment or assumption of such Company Debt; and (f) all indebtedness of others of the type referred to in clauses (a) through (f) above guaranteed directly or indirectly in any manner by the Company. For the avoidance of doubt, and notwithstanding anything herein to the contrary, Company Debt shall not include any amounts included in the calculation of Net Working Capital and shall not include Outstanding Company Fees.

“Company Disclosure Schedules” has the meaning set forth in ARTICLE IV.

“Company Group” means the Company and the UK Subsidiary.

“Company Intellectual Property” means all Owned Intellectual Property and all Intellectual Property used or held for use in connection with, or otherwise necessary for, conducting the business of the Company Group as currently conducted, and as proposed to be conducted.

“Company IT Assets” means all Software systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches, and all other information technology equipment, and all associated documentation, in each case, used or held for use in connection with, or otherwise necessary for, conducting the business of the Company Group as currently conducted, and as proposed to be conducted.

“Company Option” has the meaning set forth in Section 3.2(a).

“Company Option Final Schedule” has the meaning set forth in Section 3.2(a).

“Company Option Proposed Schedule” has the meaning set forth in Section 3.2(a).

“Company Requisite Approval” means the affirmative vote at a meeting or by written consent of the Company Stockholders holding a majority of the shares of the Company Common Stock approving the Merger, the Company Ancillary Documents and the transactions contemplated thereunder.

“Company Stock Plan” means the Company’s Employee Stock Plan dated April 24, 2017, including all Stock Option Agreements entered into by the Company pursuant thereto.

“Company Stockholder” means the holder of a share of Company Common Stock.

“Company Stockholder Support Agreement” has the meaning set forth in the Recitals hereto.

“Company Taxes” shall mean, in each case, except to the extent specifically treated as a liability in the calculation of Net Working Capital, without duplication, any of the following Taxes (in each case, whether imposed, assessed, due or otherwise payable directly, as a successor or transferee, pursuant to a Tax sharing agreement entered (or assumed) by the Company or its Subsidiaries on or prior to the Closing Date, in connection with the filing of a Tax Return, as a result of an assessment or adjustment by any Governmental Entity, by means of withholding, or for any other reason and whether disputed or not): (i) any and all Taxes imposed on the Company and its Subsidiaries for all Pre-Closing Tax Periods and for the portion of any Straddle Period ending on the Closing Date, (ii) any and all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company or any of its Subsidiaries (or any predecessor of the Company or its Subsidiaries) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; (iii) any and all Taxes of any person imposed on the Company or its Subsidiaries arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing; and (iv) any out-of-pocket fees and expenses (including attorneys’ and accountants’ fees) incurred by the Company or its Subsidiaries or Buyer in connection with any amounts described in (i) – (iii).



“Company Update” has the meaning set forth in Section 6.13(a).

“Confidentiality Agreement” shall mean the Confidentiality and Non-Disclosure Agreement, dated as of July 23, 2022, between the Company and Nauticus Robotics Holdings, Inc. (f/k/a Nauticus Robotics, Inc.).

“Contract” means any written or oral contract, agreement, purchase order, commitment, Permit, loan or credit agreement, note, bond, mortgage, indenture, lease, sublease, purchase order or other agreement, instrument, concession, franchise or license, including, without limitation, customer contracts, customer orders and backlog, royalty and license agreements and rights, purchase agreements and rights to use technology owned by others.

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

“Customer Information” means all non-public records, books, reports, data and other information concerning customers.

“DGCL” has the meaning set forth in the Recitals hereto.

“Dissenting Share” has the meaning set forth in Section 3.1(e).

“Effective Time” has the meaning set forth in Section 2.2.

“Environmental Laws” means any federal, state, local or foreign Law (including, without limitation, common law), treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or governmental restriction or any agreement with any Governmental Entity or other third party, whether now or hereafter in effect, relating to the environment, human health and safety or to pollutants, contaminants, wastes or chemicals or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substances, wastes or materials.

“Equity Value” means the Base Equity Value, (A) *decreased* by the Excess Company Debt Amount, (B) *decreased* by the Working Capital Deficiency (if any), (C) *increased* by the Working Capital Excess (if any), (D) *decreased* by the RWI Underwriting Fee Amount, (E) *decreased* by the RWI Broker Fee Amount, (F) *decreased* by 50% of the RWI Premium Amount, and (G) *decreased* by the Outstanding Company Fees Deficiency (if any).

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

“ERISA Affiliate” means any Person treated as a single employer with the Company under Section 414(b), (c), (m), or (o) of the Code.

“Estimated Closing Statement” has the meaning set forth in Section 3.4(a).

“Estimated Net Working Capital” has the meaning set forth in Section 3.4(a).

“Excess Company Debt Amount” has the meaning set forth in Section 3.4(h).

“Final Closing Statement” has the meaning set forth in Section 3.4(b) and Section 3.4(c).

“Financial Statements” has the meaning set forth in Section 4.7.

“Fraud” means common law fraud under Delaware law in connection with this Agreement, expressly excluding (x) constructive fraud and (y) fraud resulting from or attributable to purported recklessness without the intent to defraud.

“GAAP” means generally accepted accounting principles employed in the United States (as in effect prior to giving effect to the implementation of FASB’s ACS 842).

“Goods” has the meaning set forth in Section 4.20(b)(i).

“Government Bid” means any bid, offer, proposal or response to solicitation that, if accepted or awarded, would result in the establishment of a Government Contract.

“Government Contract” means any contract, subcontract, teaming agreement or arrangement, joint venture, basic ordering agreement, blanket purchase agreement, letter agreement, purchase order, delivery order, task order, grant, cooperative agreement, change order or other commitment or funding vehicle that exists between the Company and (i) any Governmental Entity, (ii) any prime contractor to any Governmental Entity or (iii) any subcontractor, at any tier with respect to any contract described in clause (i) or (ii) related to the business of the Company.

“Governmental Entity” means the United States government, any state or local or foreign government or any court, department, instrumentality, commission, agency, including administrative or regulatory agencies, of the United States government, any state government or any local government, or other governmental authority or agency, domestic or foreign.

“Hazardous Materials” mean any waste, pollutant, contaminant, hazardous substance, toxic, ignitable, reactive or corrosive substance, hazardous waste, special waste, industrial substance, by-product, process intermediate product or waste, petroleum or petroleum-derived substance or waste, chemical liquids or solids, liquid or gaseous products or any constituent of any such substance or waste, the use, handling or disposal of which is in any way governed by or subject to any applicable Environmental Law.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world: (i) patents, industrial designs, and utility models and applications for any of the foregoing, including all provisionals, divisionals, continuations, continuations-in-part, requests for continuing examination, reissues, reexaminations, renewals and extensions of any of the foregoing and all rights to claim priority of any of the foregoing; (ii) trademarks, service marks, certification marks, trade names, trade dress, logos, slogans, tag lines, fictitious business names, uniform resource locators, internet domain names, social media accounts and handles, and all other source or business identifiers or designators of origin (whether registered or unregistered), registrations and applications, for registration of, and renewals and extensions of, any of the foregoing, and all common law rights in and goodwill associated with any of the foregoing (collectively, “Trademarks”); (iii) works of authorship, websites, copyrights, mask work rights, database rights, and design rights (all whether registered or unregistered); registrations and applications for registration of, and all renewals and extensions of, any of the foregoing and all moral rights associated with any of the foregoing; (iv) all economic rights of authors and inventors, however denominated; (v) computer software, firmware, databases, data collections and related documentation and materials, including source code, object code, code repositories, development tools, application programming interfaces, user interfaces, architecture, files, manuals, programmers’ notes, derivative works, foreign language versions, fixes, upgrades, updates, enhancements, current and prior versions and releases, and all media and other tangible property necessary for the delivery or transfer of any of the foregoing (collectively, “Software”); (vi) artificial intelligence technologies, including machine learning technologies and deep learning technologies; (vii) trade secrets and other proprietary and confidential information and data, including inventions (whether or not patentable or reduced to practice), invention disclosures, ideas, developments, improvements, know-how, designs, drawings, algorithms, source code, methods, processes, techniques, formulae, research and development, compilations, compositions, manufacturing processes, production processes, devices, specifications, reports, analyses, data, data analytics, customer lists, supplier lists, pricing information, cost information, business plans, business proposals, marketing plans, marketing proposals, and chemical, biochemical, toxicological, and material and information and data relating thereto and formulation; (viii) any rights recognized under applicable Law that are equivalent or similar to any of the foregoing; and (ix) all rights to sue and collect damages for past, present and future infringement of and other violations of any of the foregoing.

“Intended Tax Treatment” has the meaning set forth in Section 6.9(a).

“Interim Financial Statements” has the meaning set forth in Section 4.7.

“Knowledge” of any Person means (a) the actual knowledge of such Person and (b) that knowledge which should have been acquired by such Person after reasonable inquiry. When used in the case of the Company, the term “Knowledge” shall include the Knowledge of those individuals set forth on Exhibit B.

“Large Stockholder Lock-Up Agreement” has the meaning set forth in the Recitals hereto.

“Latest Balance Sheet” has the meaning set forth in Section 4.7.

“Latest Balance Sheet Date” has the meaning set forth in Section 4.7.

“Law” means any law (both common and statutory law and civil and criminal law), treaty, convention, rule, directive, legislation, ordinance, regulatory code (including, without limitation, statutory instruments, guidance notes, circulars, directives, decisions, rules and regulations) or similar provision having the force of law or an Order of any Governmental Entity.

“Leased Real Property” has the meaning set forth in Section 4.5(b).

“Letter of Transmittal” has the meaning set forth in Section 3.3(b).

“Liability” means any actual liability or obligation (including as related to Taxes), whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, determined, determinable or otherwise, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

“Lien” means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, or other encumbrance in respect of such property or asset. For the purposes of this Agreement, a Person shall be deemed to own, subject to a Lien, any property or asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

“Lock-Up Agreement” has the meaning set forth in the Recitals hereto.

“Losses” means losses, damages, liabilities, deficiencies, Proceedings, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include consequential, special, indirect or punitive damages, except to the extent actually awarded to a Governmental Entity or other third party.

“Malicious Code” means any (i) back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a Person other than the user of the program; (ii) virus, Trojan horse, worm, or other Software routine or hardware component designed to permit unauthorized access, to disable, erase, or otherwise harm Software, hardware, or data; and (iii) similar programs.

“Mandatory Exercise” has the meaning set forth in Section 3.2(a).

“Material Adverse Effect” means any state of facts, change, event, effect or occurrence (whether or not constituting a breach of a representation, warranty or covenant set forth in this Agreement) that, individually or in the aggregate, is or may be reasonably likely to be materially adverse to the business, financial condition, results of operations, properties, assets or Liabilities of the Company Group or the Buyer, as applicable. A Material Adverse Effect shall also include any state of facts, change, event or occurrence that shall have occurred or been threatened that (when taken together with all other adverse state of facts, changes, events, effects or occurrences that have occurred or been threatened) is or would be reasonably likely to prevent or materially delay the performance by the Company Group or the Buyer, as applicable of any of their respective obligations under this Agreement or the consummation of the transactions contemplated hereby. Notwithstanding anything contained herein to the contrary, “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company Group or the Buyer, as applicable, operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Company Group or the Buyer, as applicable; (vi) any changes in Law or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (vii) any natural or man-made disaster or acts of God; or (viii) any failure by the Company Group or the Buyer, as applicable to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded).

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

“Merger” has the meaning set forth in the Recitals hereto.

“Merger Sub” has the meaning set forth in the introductory paragraph hereto.

“Merger Sub Common Stock” has the meaning set forth in Section 3.1(a).

“Net Working Capital” means the total current assets of the Company minus the total current Liabilities of the Company, determined in accordance with the sample calculation of Net Working Capital, based on the information included in the Interim Financial Statements, as attached hereto as Annex III. Notwithstanding anything contained herein to the contrary, Net Working Capital shall not include cash of the Company or any amount of the Outstanding Company Fees.

“Optionholders” means the holders of the Options.

“Options” means the outstanding options to purchase shares of Company Common Stock.

“Orders” means judgments, writs, decrees, compliance agreements, injunctions or judicial or administrative orders and legally binding determinations of any Governmental Entity or arbitrator.

“OSS Lease Purchase and License Agreement” means that certain Lease Purchase and License Agreement, dated as of May 3, 2021, between the Company and OneSubsea LLC, a Delaware limited liability company.

“Outside Date” has the meaning set forth in Section 8.1(b).

“Outstanding Company Fees” means the dollar amount, measured as of the Closing Date, of (i) the unpaid fees and disbursements of outside counsel to the Company or the Company Stockholders incurred in connection with the transactions contemplated by this Agreement and (ii) the unpaid fees and expenses of any other agents, accountants, auditors (excluding the fees of Whitley Penn incurred by the Company in connection with the audit of the Company’s financial statements prior to the Closing Date), advisors, consultants, experts and financial advisors employed by the Company or the Company Stockholders in connection with the transactions contemplated by this Agreement.

“Outstanding Company Fees Deficiency” has the meaning set forth in Section 3.4(f).

“Outstanding SAAB Amount” means the dollar amount, measured as of the date five (5) Business Days prior to the Closing Date, that the Company owes to OneSubsea LLC pursuant to the OSS Lease Purchase and License Agreement.

“Owned Intellectual Property” means all Intellectual Property owned or purported to be owned by the Company Group.

“Owned Software” means all Software that is Owned Intellectual Property.

“Party” and “Parties” have the meanings set forth in the introductory paragraph hereto.

“PCI-DSS” means the Payment Card Industry Data Security Standard issued by the PCI Security Standards Council, as it may be amended from time to time.

“Per Share Equity Consideration” means with respect to any share of Company Common Stock held by a Company Stockholder, issued and outstanding immediately prior to the Effective Time, a number of shares of Buyer Common Stock equal to (a) the Per Share Equity Consideration Value divided by (b) the 20-day VWAP calculated pursuant to Annex II, which is stipulated by the Parties to be \$2.04.

“Per Share Equity Consideration Value” means (a) the Equity Value divided by (b) the total number of shares of Company Common Stock issued and outstanding as of immediately prior to the Effective Time.

“Permits” means all permits, licenses, authorizations, filings or registrations, franchises, approvals, certificates (including, without limitation, certificates of need, construction and operation permits and safety certificates), exemptions, classifications, registrations and variances from Governmental Entities.

“Permitted Company Debt Amount” means the dollar amount of the Company Debt as of immediately prior to the Effective Time, not to exceed a dollar amount equal to the sum of \$1,000,000 *plus*, the Outstanding SAAB Amount.

“Permitted Liens” means (i) Liens for Taxes not yet due and payable for which adequate reserves have been established consistent with historical practices of the Company, (ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the ordinary course of business consistent with past practice and not yet delinquent, (iii) non-exclusive Intellectual Property licenses granted by the Company in the ordinary course of business consistent with past practices, (iv) zoning, building, or other restrictions, variances, covenants, rights of way, encumbrances, easements and other minor irregularities in title, (v) other non-monetary Liens that arise or are incurred in the ordinary course of business which, individually or in the aggregate, do not (A) interfere in any material respect with the present use of or occupancy of the applicable property by the Company, (B) have more than an immaterial effect on the value thereof or its use or (C) would impair the ability of such property to be sold for its present use, and (vi) those liens set forth on Schedule 1.

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

“Personal Information” means, to the extent regulated by Contract, Law or privacy policy applicable to the Company, any data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household, including or any other data that constitutes personal information or personal data under any Contract, Law or privacy policy applicable to the Company.

“Post-Closing Seller” means each holder of Company Common Stock who is not a Closing Seller.

“Post-Closing Tax Period” means any Tax period (or portion of a Straddle Period) ending after the Closing Date.

“Pre-Closing Tax Period” means any Tax period (or portion of a Straddle Period) ending on or before the Closing Date.

“Privacy and Security Requirements” means, to the extent applicable to Company, (a) any Laws regulating the Processing of Protected Data; (b) the PCI DSS and any other privacy- or data security- related industry standards to which the Company is legally or contractually bound or has publicly represented with which it complies; (c) all Contracts between the Company and any Person that are applicable to the Processing of Protected Data; and (d) all policies and procedures applicable to the Company relating to the Processing of Protected Data, including without limitation all website and mobile application privacy policies and internal information security procedures.

“Proceedings” means actions, suits, claims, reviews and investigations and legal, administrative or arbitration proceedings.

“Process” means the creation, collection, use (including, without limitation, for the purposes of sending telephone calls, text messages and emails), storage, maintenance, processing, recording, distribution, transfer, transmission, receipt, import, export, protection, safeguarding, access, disposal or disclosure or other activity regarding data (whether electronically or in any other form or medium).

“Protected Data” means data regulated by the PCI-DSS, Personal Information and all data for which the Company Group is required by Law, Contract or privacy policy to safeguard and/or keep confidential or private.

“Publicly Available Software” means (i) any Software that is distributed as free software or open source software (including Software distributed under the GNU General Public License, the GNU Lesser General Public License, the Affero General Public License, any Creative Commons “ShareAlike” license, or the Apache Software License), or pursuant to open source, copyleft, or similar licensing and distribution models; and (ii) any Software that requires as a condition of use, modification, and/or distribution of such Software that such Software or other Software incorporated into, linked to, derived from, or distributed with such Software (A) be disclosed or distributed in source code form, (B) be licensed for the purpose of making derivative works, or (C) be redistributable at no or minimal charge.

“Receivables” has the meaning set forth in Section 4.23(b).

“Registered Intellectual Property” means all of the Owned Intellectual Property that is the subject of an application, certificate, filing, registration, or other document issued by, filed with, or recorded by any Governmental Entity, quasi-governmental authority, or registrar.

“Related Documents” means the Confidentiality Agreement, the Company Ancillary Documents and the Buyer Ancillary Documents.

“Representatives” has the meaning set forth in Section 6.2.

“Restricted Cash” means any cash or cash equivalents of the Company which are not freely usable by Buyer because they are subject to restrictions, limitations or taxes on use or distribution by law, contract or otherwise.

“RWI Broker Fee Amount” means the fee payable to the Buyer’s insurance broker in connection with obtaining the RWI Policy.

“RWI Policy” means the buyer-side representations and warranties insurance policy purchased and bound by Buyer prior to the Closing and attached hereto as Exhibit A.

“RWI Premium Amount” means the dollar amount of the premium payable in respect of the RWI Policy.

“RWI Underwriting Fee Amount” means the dollar amount paid to the Buyer’s insurance broker in connection with obtaining the RWI Policy.

“Secretary of State” has the meaning set forth in Section 2.2.

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

“Security Breach” means any (i) security breach or breach of Protected Data under applicable Privacy and Security Requirements or any unauthorized access, acquisition, use, disclosure, modification, deletion, or destruction of Protected Data or the Company Group’s own confidential information; or (ii) unauthorized interference with system operations or security safeguards of the Company’s information systems, including any phishing incident or ransomware attack.

“Small Stockholder Lock-Up Agreement” has the meaning set forth in the Recitals hereto.

“Software” has the meaning set for in the definition of Intellectual Property.

“Straddle Period” means a taxable period which includes (but does not end on) the Closing Date.

“Subsidiary” means, with respect to any Person, any other Person, of which an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body or, if there are no such voting interests, 50% or more of the equity interests of which is owned directly or indirectly by such first Person. For the purposes hereof, the term Subsidiary shall include all Subsidiaries of such Subsidiary.

“Surviving Corporation” has the meaning set forth in Section 2.1.

“Surviving Corporation Common Stock” has the meaning set forth in Section 3.1(a).

“Target Net Working Capital” means \$2,200,000.

“Tax Proceeding” has the meaning set forth in Section 4.26(e).

“Tax Return” shall mean any report, return, claim for refund, estimate, election, notice, declaration or other information required to be supplied to a Governmental Entity in connection with Taxes, including estimated returns and reports of every kind with respect to Taxes, any schedule or attachment thereto, and any amendment thereof or extension of time to file any of the foregoing.

“Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges (including interest, penalties or additions associated therewith), including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind imposed by any Governmental Entity, whether disputed or not, including charges, interest or penalties imposed with respect thereto by any Governmental Entity.

“Top Customers” has the meaning set forth in Section 4.20(a)(i).

“Top Suppliers” has the meaning set forth in Section 4.20(b)(i).

“Trademarks” has the meaning set forth in the definition of Intellectual Property.

“Transfer Taxes” has the meaning set forth in Section 6.10.

“Transition Period” has the meaning set forth in Section 6.1(a).

“Treasury Regulations” means the U.S. Department of the Treasury tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“UK Life Assurance Scheme” means the UK Subsidiary’s registered group life policy with American International Group, Inc.

“UK Pension Scheme” means the UK Subsidiary’s pension arrangement with the People’s Pension Scheme provided by B&CE.



“UK Subsidiary” means 3D at Depth Limited, a private limited company registered in England and Wales with the Company Number 11274431 and having its registered office at 66 North Quay, Great Yarmouth, Norfolk, United Kingdom NR30 1HE.

“Unaudited Financial Statements” has the meaning set forth in Section 4.7.

“Working Capital Deficiency” has the meaning set forth in Section 3.4(d).

“Working Capital Excess” has the meaning set forth in Section 3.4(e).

## **ARTICLE II THE MERGER**

### **Section 2.1 The Merger.**

At the Effective Time, upon the terms and subject to the conditions of this Agreement, Merger Sub will be merged with and into the Company, the separate corporate existence of Merger Sub will cease and the Company will be the surviving corporation in the Merger (the “Surviving Corporation”). As a result of the Merger, all of the respective outstanding shares of capital stock of the Company and Merger Sub will be converted or cancelled in the manner provided in ARTICLE III.

### **Section 2.2 Effective Time.**

At the Closing, a certificate of merger (the “Certificate of Merger”) will be duly prepared and executed by the Surviving Corporation and thereafter delivered to the Secretary of State of the State of Delaware (the “Secretary of State”) for filing, as provided in Section 103 of the DGCL, on the Closing Date. The Merger will become effective at the time of the filing of the Certificate of Merger with the Secretary of State, or at such later time as may be agreed by Buyer and the Company and stated in the Certificate of Merger (the date and time of such filing (or stated later time, if any) being referred to herein as the “Effective Time”).

### **Section 2.3 Closing.**

The consummation of the Merger (the “Closing”) shall take place remotely via the electronic exchange of executed documents and other deliverables (by PDF), as promptly as practicable following, but in no event later than, the third (3<sup>rd</sup>) Business Day following the satisfaction or waiver of each of the conditions set forth in ARTICLE VII hereof (other than, but subject to satisfaction of, the conditions to be satisfied on the Closing Date), or at such other time and place as may be agreed to by the parties hereto. Such time and date are referred to in this Agreement as the “Closing Date.”

### **Section 2.4 Effects of the Merger.**

At the Effective Time, the effects of the Merger will be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, Liabilities, restrictions, disabilities and duties of the Company and Merger Sub shall become the debts, Liabilities, restrictions, disabilities and duties of the Surviving Corporation.

**Section 2.5 Certificate of Incorporation, By-Laws and Officers and Directors of the Surviving Corporation.**

(a) Certificate of Incorporation and Bylaws of the Surviving Corporation. As of the Effective Time, the certificate of incorporation and the bylaws of Merger Sub shall become the certificate of incorporation and bylaws of the Surviving Corporation until thereafter supplemented or amended in accordance with their terms and the DGCL.

(b) Directors and Officers of the Surviving Corporation. The Company shall take all necessary action prior to the Effective Time such that (a) each director of the Company in office immediately prior to the Effective Time shall cease to be a director immediately following the Effective Time (including by causing each such director to tender an irrevocable resignation as a director, effective as of the Effective Time) and (b) certain directors or executive officers of the Company, determined by the Buyer and communicated in writing to the Company prior to the Effective Time, shall be appointed to the Board of Directors of the Surviving Corporation, effective as of immediately following the Effective Time (including by causing the Company Board to adopt resolutions prior to the Effective Time that expand or decrease the size of the Company Board, as necessary, and appoint such persons to the vacancies resulting from the incumbent directors' respective resignations or, if applicable, the newly created directorships upon any expansion of the size of the Company Board). Each person appointed as a director of the Surviving Corporation pursuant to the preceding sentence shall remain in office as a director of the Surviving Corporation until his or her successor is elected and qualified or until his or her earlier resignation or removal.

**ARTICLE III  
MERGER CONSIDERATION AND CONVERSION OF SHARES**

**Section 3.1 Conversion of Capital Stock.**

At the Effective Time, by virtue of the Merger and without any further action on the part of Buyer, Merger Sub, the Company or the Company Stockholders:

(a) Capital Stock of Merger Sub. Each share of the common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time ("Merger Sub Common Stock") will be converted into and become one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation ("Surviving Corporation Common Stock"), so that, immediately following the Effective Time, Buyer shall be the holder of all of the issued and outstanding shares of Surviving Corporation Common Stock.

(b) Conversion of Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares that are Dissenting Shares) will be converted into the right to receive the applicable Per Share Equity Consideration. At the Effective Time, all such shares of Company Common Stock will no longer be outstanding and will be cancelled and retired automatically and will cease to exist, and each holder of a Certificate representing such a share of Company Common Stock will cease to have any rights with respect thereto, except the right to receive Per Share Equity Consideration upon the surrender of such Certificate (or other evidence of ownership reasonably acceptable to Buyer).

(c) Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, each share of Company Common Stock that is issued and outstanding immediately prior to the Effective Time, the holder of which has not voted in favor of the Merger or consented thereto in writing and who has provided the Company with a written demand for appraisal for such shares of Company Common Stock in accordance with the DGCL (in each case, a "Dissenting Share"), will not be converted into or represent the right to receive the Per Share Equity Consideration, except as set forth below. Such holders shall instead be entitled to receive payment of the appraised value of such shares of Company Common Stock held by them in accordance with the provisions of Section 262 of the DGCL, except that all Dissenting Shares held by Company Stockholders who shall have failed to perfect or who effectively shall have withdrawn or otherwise lost their rights to appraisal of such shares of Company Common Stock under Section 262 of the DGCL shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Per Share Equity Consideration pursuant to Section 3.1(b). The Company shall give Buyer prompt notice of any written demands received by the Company for appraisal, and Buyer shall conduct all negotiations and proceedings with respect to such demands (provided that Buyer shall keep the Company reasonably apprised of the same). The Company shall not, except with the prior written consent of Buyer, voluntarily make any payment with respect to any demands for appraisal or settle or offer to settle any such demands.

### **Section 3.2 Company Options.**

(a) No fewer than five (5) days prior to the Closing Date, the Company shall have caused all outstanding and unexercised options to purchase shares of the Company Common Stock granted under the Company Stock Plan (each, a "Company Option") to have accelerated so as to be fully vested and exercisable (the "Acceleration"). Upon such Acceleration, the Company shall have caused each holder of Company Options to have exercised such Company Options (the "Mandatory Exercise") by the Company's administration of a cashless exercise program, such that, prior to the Effective Time, each holder of Company Options becomes a holder of the applicable number of shares of Company Common Stock in accordance with the Company Stock Plan; provided, that each holder of Company Options that chooses a cashless exercise shall exercise such Company Options as follows: (i) the Company shall offset against the exercise a number of Company Common Stock which, when valued at Fair Market Value (as defined in the Company Stock Plan) on the date of exercise, equals the exercise price of such Company Options, and (ii) the Company shall withhold from the Company Common Stock issued upon such exercise, a number of shares of Company Common Stock which, when valued at Fair Market Value (as defined in the Company Stock Plan) on the date of exercise, equals the total tax obligations required to be withheld or paid pursuant to any Federal, State or local tax or revenue laws or regulations, as may be determined by the Company. A holder of Company Options may also exercise its Company Options by means of payment of cash to the Company, in which case, the exercise of such Company Options shall be administered in accordance with the Company Stock Plan, including with respect to any applicable withholding. In each case of a cashless or cash exercise pursuant to this Section 3.2, the Company shall deliver a schedule (the "Company Option Proposed Schedule") of its proposed calculations (broken out by Company Option holder) to Buyer at least five (5) Business Days prior to the Mandatory Exercise, and Buyer shall have the right to review and approve the number of shares of Company Common Stock issued to each such holder of Company Options (as so approved, the "Company Option Final Schedule").

(b) As of the Effective Time, all unexercised Company Options, if any exist, shall be cancelled and each holder of Company Options shall cease to have any rights with respect to such Company Options, except as set forth in this Section 3.2. The Company Options shall not rollover into the Buyer Incentive Plan. No options to purchase shares of Buyer Common Stock shall be issued or shares reserved in respect of any Company Options.

### **Section 3.3 Payment of Merger Consideration.**

(a) Closing Sellers. At the Closing, and upon surrender by the holder thereof of share certificates representing ownership of the Company Common Stock (or other proof of ownership reasonably satisfactory to Buyer) (each a "Certificate"), Buyer shall cause to be issued (by delivering an instruction letter to its transfer agent) to each Closing Seller the Per Share Equity Consideration for each share of Company Common Stock held by such Closing Seller. Any Outstanding Company Fees will be paid by the Buyer in accordance with the applicable payment terms.

(b) Post-Closing Sellers. As soon as reasonably practicable following the date hereof, the Company (on behalf of Buyer) shall deliver to each holder of Company Common Stock that is not a Closing Seller (i) a letter of transmittal (the "Letter of Transmittal"), and (ii) instructions for use in surrendering the certificates in exchange for the Per Share Equity Consideration. No interest will be paid or accrued on the Per Share Equity Consideration payable upon the surrender of any Certificate.

(c) Stock Transfer Books. At the Effective Time, the stock transfer books of the Company will be closed and thereafter there will be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Company Common Stock. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they will be canceled and exchanged as provided in this ARTICLE III, except as otherwise provided by applicable Law. Until surrendered as contemplated by Section 3.3(a), each Certificate (other than Certificates representing Dissenting Shares and shares to be cancelled in accordance with Section 3.1(b)) will be deemed at any time after the Effective Time to represent only the right to receive upon surrender the amount that the holder thereof has the right to receive in respect of such Certificate pursuant to the provisions of this Agreement.

(d) Lost Certificates. If any Certificate has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, including indemnification of the Company with respect to damages arising out of the lost Certificate, the Company shall, in exchange for such lost, stolen or destroyed Certificate, pay to the Person entitled thereto the amount due to such Person pursuant to the provisions of this ARTICLE III.

(e) Withholding Rights. The Buyer will be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Optionholder such amounts as the Buyer is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority by the Buyer, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the Optionholders in respect of which such deduction and withholding was made by the Buyer.

#### **Section 3.4 Closing Adjustment**

(a) Not later than five (5) Business Days prior to the Closing Date, the Company shall deliver to Buyer a statement in the form attached hereto as Annex I (the "Estimated Closing Statement") setting forth the Company's reasonable, good-faith estimate of (i) Excess Company Debt Amount (if any), (ii) the Net Working Capital (the "Estimated Net Working Capital"), (iii) the Working Capital Deficiency or Working Capital Excess (as applicable), (iv) the dollar amount of the Outstanding Company Fees, (v) the Cash Amount, (vi) the Outstanding Company Fees Deficiency (if any), (vii) the RWI Underwriting Fee Amount, (viii) the RWI Broker Fee Amount, (ix) the RWI Premium Amount, (x) the Equity Value, (xi) the Per Share Equity Consideration Value, and (xii) the Per Share Equity Consideration in each case, as of the close of business on the Closing Date.

(b) Following delivery of the Estimated Closing Statement, if the Buyer has any comment with respect to any amounts included in the Estimated Closing Statement, Company shall consider such comments in good faith. Not later than two (2) Business Days prior to the Closing Date, the Company and the Buyer shall agree on the amounts set forth in the Estimated Closing Statement (the "Final Closing Statement").

(c) The Final Closing Statement shall be in the form attached hereto as Annex I, updated as of the close of business on the day immediately prior to the Closing Date, as agreed by the Company and the Buyer, and shall be final and binding on the parties hereto.

(d) If the amount of the Net Working Capital as set forth on the Final Closing Statement is less than the Target Net Working Capital by more than \$37,500 (the amount of such deficiency, disregarding the threshold, the "Working Capital Deficiency"), then the Base Equity Value shall be decreased by an amount equal to the Working Capital Deficiency, from the first dollar.

(e) If the amount of the Net Working Capital as set forth on the Final Closing Statement exceeds the Target Net Working Capital by more than \$37,500 (the amount of such excess, disregarding the threshold, the "Working Capital Excess"), then the Base Equity Value shall be increased by an amount equal to the Working Capital Excess, from the first dollar.

(f) If the dollar amount of the Outstanding Company Fees is in excess of the Cash Amount (the "Outstanding Company Fees Deficiency"), then the Base Equity Value shall be decreased by such amount.

(g) If the dollar amount of the Company Debt is in excess of the Permitted Company Debt Amount (the "Excess Company Debt Amount"), then the Base Equity Value shall be decreased by the Excess Company Debt Amount.

(h) If the dollar amount of the Company Debt is less than the Permitted Company Debt Amount, then the Base Equity Value shall not be adjusted in respect of the Company Debt.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to Buyer and Merger Sub, except as set forth in the disclosure schedule delivered by the Company to the Buyer (the "Company Disclosure Schedules"), that the statements contained in this ARTICLE IV are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this ARTICLE IV).

##### **Section 4.1 Organization**

The Company is a corporation duly formed and validly existing under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company is duly qualified or licensed to do business as a foreign corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to obtain such qualification or license would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect. The Company has heretofore made available to Buyer true, correct and complete copies of the Company's charter documents as currently in effect and the Company's corporate record books with respect to actions taken by the Company's officers, stockholders and directors. Schedule 4.1 sets forth all of the trade names and fictitious business names (D/B/A's) used by the Company.

##### **Section 4.2 Capitalization and Subsidiaries**

(a) The authorized capital stock of the Company as of the Closing consists of 2,500,000 shares of Company Common Stock, of which 1,688,629 shares are issued and outstanding. Each issued and outstanding share of Company Common Stock is duly authorized, validly issued, fully paid and nonassessable, is free of any preemptive rights in respect thereof, is free and clear of all Liens, will be free and clear of all Liens as of the Effective Time and was issued in compliance with all applicable Laws. There are no declared or accrued but unpaid dividends or other distributions with respect to any shares of capital stock of the Company. Except as set forth on Schedule 4.2, there are no (a) outstanding securities convertible or exchangeable into shares of capital stock of the Company; (b) options, warrants, calls, subscriptions, conversion rights, exchange rights, purchase rights or other rights, agreements or commitments obligating the Company to issue, transfer or sell any shares of its capital stock; or (c) voting trusts, proxies or other agreements or understandings to which the Company is a party or by which the Company is bound with respect to the voting, transfer or other disposition of its shares of capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the Company.

(b) Each Subsidiary of the Company and its jurisdiction of incorporation, formation or organization, as applicable, is set forth on Schedule 4.2. The Subsidiaries of the Company have been duly formed or organized and are validly existing under the Laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, lease or operate all of their respective properties and assets and to conduct their respective businesses as they are now being conducted. Each Subsidiary of the Company is duly licensed or qualified and in good standing as a foreign or extra-provincial corporation (or other entity, if applicable) in each jurisdiction in which its ownership of property or the character of its activities is such as to require it to be so licensed or qualified or in good standing, as applicable, except where the failure to be so licensed or qualified or in good standing would not have, or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Other than the Subsidiaries set forth on Schedule 4.2, there are no other Persons in which the Company directly or indirectly owns, of record or beneficially, any direct or indirect capital stock or other equity interest or any right (contingent or otherwise) to acquire the same, nor is the Company directly or indirectly a member of or participant in any partnership, joint venture or similar arrangement. True, correct and complete copies of the governing documents of the Company's Subsidiaries, in each case, as amended to the date of this Agreement, have been previously made available to Buyer by or on behalf of the Company.

**Section 4.3 Authorization**

The Company has full power and authority to execute and deliver this Agreement and any other certificate, agreement, document or other instrument to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the "Company Ancillary Documents") and to perform its obligations under this Agreement and the Company Ancillary Documents and to consummate the transactions contemplated hereby and thereby, subject to obtaining the Company Requisite Approval. The execution, delivery and performance of this Agreement and such Company Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, upon obtaining the Company Requisite Approval, have been duly and validly authorized and approved by the Company Board and no other company proceeding on the part of the Company is necessary to authorize this Agreement or such Company Ancillary Documents or the Company's performance hereunder or thereunder. The directors of the Company have approved the execution, delivery and performance of this Agreement and the Company Ancillary Documents and the consummation of the transactions contemplated by this Agreement and by the Company Ancillary Documents. This Agreement has been, and the Company Ancillary Documents will be as of the Closing Date, duly executed and delivered by the Company and do or will, as the case may be, constitute the valid and binding agreements of the Company, enforceable against the Company in accordance with their respective terms, subject to obtaining the Company Requisite Approval, applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

#### **Section 4.4 Absence of Restrictions and Conflicts.**

The execution, delivery and performance of this Agreement and the Company Ancillary Documents, the consummation of the transactions contemplated by this Agreement and the Company Ancillary Documents and the fulfillment of and compliance with the terms and conditions of this Agreement and the Company Ancillary Documents do not or will not, as the case may be, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, permit the acceleration of any obligation under or create in any party the right to terminate, modify or cancel, or otherwise require any action, consent, approval (except the Company Requisite Approval), order, authorization, registration, declaration or filing with respect to (a) any term or provision of the charter documents of the Company, (b) except as indicated on Schedule 4.13(b), any Contract, Permit or other instrument applicable to the Company or its business, (c) any Order of any court or Governmental Entity or agency to which the Company is a party or by which the Company or any of its assets is bound or (d) except as set forth on Schedule 4.4, any Permit, Law or arbitration award of any Governmental Entity or public or regulatory unit, agency or authority applicable to the Company or its business. To the Company's Knowledge, there are no facts or circumstances that might delay, impede or prevent any Person in obtaining any approval, consent or Permit contemplated by this Agreement.

#### **Section 4.5 Real Property.**

(a) The Company Group does not own any real property.

(b) Schedule 4.5(b) sets forth a complete and accurate list and description of all parcels of real property leased by the Company Group (together with all fixtures and improvements thereon, the "Leased Real Property"). The Company Group has a valid leasehold interest in its Leased Real Property, free and clear of any Liens, except for Permitted Liens. The leases of the Leased Real Property are in full force and effect. All leases of Leased Real Property are in good standing and are valid, binding and enforceable in accordance with their respective terms and there does not exist under any such lease any default or any event which with notice or lapse of time or both would constitute a default.

(c) The improvements on the Leased Real Property are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted. There are no condemnation or appropriation or similar proceedings pending or, to the Company's Knowledge, threatened against any Leased Real Property or the improvements thereon.

#### **Section 4.6 Title to Assets; Related Matters.**

The Company Group has good and valid title to all of the properties and assets, tangible or intangible, reflected in the Interim Financial Statements as being owned by the Company Group, free and clear of all Liens except for Permitted Liens, excluding inventory sold or disposed of by the Company Group since the Latest Balance Sheet Date in the ordinary course of business. The Company Group has a valid and enforceable right to use all tangible items of personal property leased by or licensed to it, free and clear of all Liens other than Permitted Liens. The Company Group's tangible assets are in good operating condition and in a state of good maintenance and repair (and in the case of plants, buildings and structures are structurally sound), ordinary wear and tear excepted, consistent with standards generally followed in the industry; provided, however, this representation does not cover equipment in the field that has damage that (A) is covered by insurance, or (B) is caused by a customer for which the customer is responsible. No Person other than the Company Group owns any equipment or other tangible personal property or assets situated on the premises of the Company which are necessary to the operation of the Company Group's business, except for the leased items that are subject to personal property leases. Schedule 4.6 sets forth a true, correct and complete list and general description of each item of tangible personal property of the Company Group with a book value of over \$5,000.00. The building, plants, structures and equipment of the Company Group are sufficient for the continued conduct of the Company Group's business after the Closing in substantially the same manner as conducted prior to the Closing.

#### **Section 4.7 Financial Statements.**

Schedule 4.7 contains true, correct and complete copies of (i) the unaudited consolidated balance sheet of the Company Group as of December 31, 2020, 2021 and 2022 (the "Balance Sheet") and the related unaudited consolidated statements of income for the years then ended, together with the notes thereto (the "Unaudited Financial Statements"), (ii) the unaudited consolidated balance sheets and statements of income for the quarter ended June 30, 2023, and (iii) the unaudited consolidated balance sheets and statements of income (the "Latest Balance Sheet") as of July 31, 2023 (the "Latest Balance Sheet Date") and with the notes thereto (the "Interim Financial Statements") and, collectively with the Unaudited Financial Statements, the "Financial Statements"). The Financial Statements fairly present in all material respects the financial condition and the results of operations of the Company Group as of the respective dates of and for the periods referred to in the Financial Statements, all consistent with historical practices of the Company Group, subject, in the case of the Unaudited Financial Statements and the Interim Financial Statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, be materially adverse) and the absence of notes (that, if presented, would not differ materially from those included in the Balance Sheet). The Financial Statements are based on the books and records of the Company Group. Since the Latest Balance Sheet Date, there has been no change in any of the accounting (or Tax accounting) policies, practices or procedures of the Company Group.

#### **Section 4.8 Inventory and Products.**

(a) The inventories set forth in the each of the Balance Sheet and the Latest Balance Sheet were properly stated therein at the lesser of cost or fair market value consistent with historical practices of the Company Group. All such inventories are owned free and clear of all Liens, except for Permitted Liens. All of the inventories recorded on the Latest Balance Sheet consist of, and all inventories of the Company Group on the Closing Date will consist of, items of a good and merchantable quality usable or saleable in the normal course of business consistent with past practices and are and will be in quantities sufficient for the normal operation of the Company Group's business in accordance with past practice, including, without limitation, packaging, raw materials, works in progress and finished products (in each case, designated as such). The values at which inventories are stated in the Financial Statements reflect the inventory valuation policy of the Company Group, which is consistent with historical practices of the Company Group.

(b) Each of the products sold by the Company Group is, and at all times up to and including the sale thereof has been, (i) in compliance in with all applicable federal, state, local and foreign Laws and regulations and (ii) fit for the ordinary purposes for which it is intended to be used. There is no design defect with respect to any of such products and each of such products contains adequate warnings, presented in a reasonably prominent manner, in accordance with applicable Laws, rules and regulations and current industry practice with respect to its contents and use.

#### **Section 4.9 No Undisclosed Liabilities.**

The Company Group has no Liabilities, except for (i) the Liabilities set forth on Schedule 4.9, (ii) Liabilities on the Latest Balance Sheet or disclosed in the notes thereto, and (iii) Liabilities that have arisen since the Latest Balance Sheet Date in the ordinary course of business (provided that there is no such material Liability that relates to breach of Contract, breach of warranty, tort, infringement, violation of Law, Order or Permit, or any Proceeding, in each case as in effect on or before the Closing Date). Except as set forth on Schedule 4.9, the Company Group has not, either expressly or by operation of Law, assumed or undertaken any material Liability of any other Person.



**Section 4.10 Absence of Certain Changes.**

Since the Latest Balance Sheet Date and except as set forth in Schedule 4.10, there has not been (i) any event, occurrence, development or state of circumstances or facts which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect; (ii) any material damage, destruction, loss or casualty to property or assets of the Company Group, whether or not covered by insurance, and if there is any damage, such damage is covered by insurance, provided, however, this representation does not cover equipment in the field that has damage that (A) can be classified as ordinary wear and tear, or (B) is caused by a customer for which the customer is responsible and for which the Company reasonably expects the customer to bear the loss of; or (iii) any sale, transfer, license, pledge, mortgage or other disposition of tangible or intangible assets by the Company Group outside of the ordinary course of business; (iv) any sale, assignment, transfer, license, or other disposal of or abandonment or lapse of any Owned Intellectual Property (other than nonexclusive licenses granted by the Company Group in the ordinary course of business); (v) any grant of any increase in the compensation of the Company Group's employees or entry into any employment, sale bonus, stay bonus or severance contract with any officer or employee of the Company Group, except for annual increases in accordance with historical practices of the Company Group or bonus payments set forth on Schedule 4.10; (vi) any action taken of the type described in Section 6.1, which, had such action occurred after the date hereof, would be in violation of such Section; or (vii) any Contract for the Company Group to take any of the actions specified in this Section 4.10.

**Section 4.11 Legal Proceedings.**

(a) There are no Proceedings, or, to the Knowledge of the Company, any basis therefor pending, or, to the Company's Knowledge, threatened against, relating to or involving the Company Group, its business or assets by or before any Governmental Entity.

(b) Since the incorporation of the Company Group, there have been no Proceedings that have (i) resulted in any criminal sanctions or (ii) resulted in any payments, in each case by or against the Company Group or any of its officers or directors in their capacity as officers or directors (whether as a result of a judgment, civil fine, settlement or otherwise).

**Section 4.12 Compliance with Laws.**

The Company Group is (and has been at all times since the date of its incorporation) in material compliance with all Laws (including, without limitation, Laws or certifications relating to zoning, environmental matters and the safety and health of employees), ordinances, regulations and Orders of all Governmental Entities, whether or not the compliance with any such Laws is voluntary or involuntary. Since the Company's incorporation, (i) the Company Group has not been charged with, and, to the Company's Knowledge, is not now under investigation with respect to, any actual or alleged violation of any applicable Law, regulation, ordinance, Order or other requirement of a Governmental Entity; (ii) the Company Group has not been a party to or bound by any Order, judgment, decree or award of any Governmental Entity; and (iii) the Company Group has filed all reports required to be filed with any Governmental Entity and has all Permits required to be held on or before the date hereof and all such reports are accurate and complete in all material respects.

All certifications for the Company Group's products are set forth on Schedule 4.12(b), and such certifications are in full force and effect as of the date hereof, and to the Company's Knowledge, no fact or circumstance exists that would render such certifications null and void.

#### **Section 4.13 Contracts**

(a) Schedule 4.13(a) sets forth a true, correct and complete list of the following Contracts to which the Company Group is a party or by which the Company Group or any of its assets is bound (collectively, the "Material Contracts"):

- (i) any bond, debenture, note, loan, credit or loan agreement or loan commitment, mortgage, indenture, guarantee or other Contract relating to the borrowing of money;
- (ii) any lease relating to the Leased Real Property or other lease or license involving any properties or assets (whether real, personal or mixed, tangible or intangible);
- (iii) any Contract or agreement that limits or restricts the Company Group or any officers or key employees of the Company Group from engaging in any business in any jurisdiction;
- (iv) any franchising and licensing agreements;
- (v) any employment agreements;
- (vi) any Contract, obligation or commitment that involves a potential commitment, including, without limitation, all open purchase orders issued outside the ordinary course of business, in excess of \$25,000.00;
- (vii) any agency, brokerage or other agreement with any insurance company;
- (viii) any Contract pursuant to which the Company Group provides any ancillary services or sells any ancillary products;
- (ix) any Contract concerning the carrying, servicing or ownership of any customer account or any commissions or fees related thereto;
- (x) any Contract that restricts the distribution of the Company Group's products;
- (xi) any Contract for capital expenditures or the acquisition or construction of fixed assets by the Company Group;
- (xii) any Contract that provides for any change in control, transaction, retention, stay or similar bonus or other payment or benefit, or accelerated vesting, upon the execution of this Agreement or in connection with the transactions contemplated hereby;
- (xiii) any Contract for the employment or retention of any officer, partner, individual employee, consultant, independent contractor or other individual on a full-time, part-time or consulting basis, including any such agreement or contract providing for severance payments;
- (xiv) any staffing agreement, temporary agency agreement, or similar agreement for the provision of temporary labor;
- (xv) any collective bargaining agreement with any recognized trade or labor union or other agreement for the representation of labor;
- (xvi) any Contract granting any Person a Lien on all or any part of any of the Company Group's assets;

(xvii) any Contract for the cleanup, abatement or other actions in connection with any Hazardous Materials, the remediation of any existing environmental condition or relating to the performance of any environmental audit or study;

(xviii) any Contract granting to any Person an option or a first refusal, first-offer or similar preferential right to purchase or acquire any assets;

(xix) any Contract with any agent, distributor or representative that is not terminable without penalty on thirty (30) calendar days' or less notice;

(xx) any Government Contract;

(xxi) any Contract with any manufacturer of the Company Group's products;

(xxii) any Contract related to the manufacturing of the Company Group's products;

(xxiii) any Contract with any supplier of materials used in the Company Group's products, in excess of \$25,000.00;

(xxiv) any Contract related to the Company Group's information technology systems;

(xxv) any Contract relating to the development, ownership, use, registration, or enforcement of, or exercise of any rights under, any Intellectual Property, provided that (1) licenses of commercially available off-the-shelf Software having a replacement cost of less than \$25,000 that is not incorporated in, linked to, distributed with or used to host or provide any Company Group product or service or Owned Software and (2) nonexclusive licenses granted by the Company Group to its customers in the ordinary course of business consistent with past practice shall not be required to be set forth in (but shall be deemed to be set forth in) this Section 4.13(a) ~~(xxv)~~;

(xxvi) any Contract providing for the indemnification or holding harmless of any officer, director, or employee;

(xxvii) any joint venture or partnership Contract;

(xxviii) any customer Contract for the provision of goods or services by the Company Group;

(xxix) any outstanding power of attorney empowering any Person to act on behalf of the Company Group; and

(xxx) any other existing Contract (other than those described in subparagraphs (i) through (xxix) of this Section 4.13(a)) that is material to the Company Group's business to which the Company Group is a party or by which it or any of its assets is bound.

True, correct and complete copies of the Contracts required to be set forth on Schedule 4.13(a) have been delivered to Buyer.

(b) The Material Contracts are legal, valid, binding and enforceable in accordance with their respective terms with respect to the Company Group, and, to the Knowledge of the Company, are legally valid and binding obligations of the other respective parties thereto. There are no existing defaults or breaches of the Company Group under any Material Contract (or events or conditions which, with notice or lapse of time or both would constitute a default or breach) and to the Company's Knowledge, there are no such defaults (or events or conditions which, with notice or lapse of time or both, would constitute a default or breach) with respect to any third party to any Material Contract. To the Company's Knowledge, there are no pending or threatened bankruptcy, insolvency or similar proceedings with respect to any party to such Material Contracts. The Company Group is not participating in any discussions or negotiations regarding modification of or amendment to any Material Contract or entry in any new Material Contract. Schedule 4.13(b) identifies each Material Contract set forth therein that requires the consent of or notice to the other party thereto to avoid any breach, default or violation of such Material Contract in connection with the transactions contemplated hereby.

**Section 4.14 Government Contracts, Subcontracts and Bids.**

(a) General.

(i) Schedule 4.14(a) sets forth a current, complete and accurate list of all Government Contracts and unexpired Government Bids involving payments in excess of \$1,000,000 that are currently active in performance (or have been active in performance in the past but have not been closed after receiving final payment) and to which the Company Group is a party. Schedule 4.14(a) accurately reports for each such Government Contract the contractor, the customer, the contract number, as well as the Company Group's estimate of the total value with respect to all Government Contracts and Government Bids.

(ii) Except as set forth on Schedule 4.14(a)(ii), no Government Contract listed in such schedule was awarded on the basis of any qualification as a "small business," "small disadvantaged business," protégé status, or other preferential status (including, but not limited to, disadvantaged business, minority-owned business, women-owned business or other business status based on ownership or control, or participation in or qualification under other preferential status programs, such as the Historically Underutilized Business Zone program or participation under Section 8(a) of the Small Business Act or similar preferences).

(iii) There is no outstanding or threatened claim, protest or Proceeding concerning any Government Contract and Government Bid and, to the Company's Knowledge, there are no circumstances that reasonably could be expected to lead to initiation of a claim, protest or Proceeding concerning any Government Contract or Government Bid.

(iv) The Company Group does not possess, and the Government Contracts do not require, security clearance from any Governmental Entity.

(b) Compliance, Performance, Termination and Breach of Government Contracts and Government Bids.

With respect to any and all Government Contracts and Government Bids to which the Company Group is or has been, within the five years immediately preceding the Closing, a party:

(i) the Company Group is, and has been since its incorporation, in compliance with all material terms and conditions of each Government Contract and Government Bid (including but not limited to all provisions and requirements incorporated expressly, by reference or by operation of applicable Laws), including all reporting requirements;

(ii) the Company Group is, and has been since its incorporation, in compliance in all material respects with its obligations under its Federal Supply Schedule contracts (including, without limitation, the Price Reduction clause, GSAR 552.238-75 and the Company Group's computation and payment of the Industrial Funding Fee) and, to the Company's Knowledge, there are no circumstances that reasonably could be expected to lead to an allegation of a violation of the Company Group's Federal Supply Schedule contracts, including, but not limited to, a triggering of the Price Reduction clause or the initiation of a claim for violating the Price Reduction clause or the Company Group's obligation to make payment of the Industrial Funding Fee;

(iii) the Company Group is, and has been since its incorporation, in compliance in all material respects with all representations and certifications made by the Company Group with respect to each Government Contract or Government Bid and such representations and certifications were accurate in every material respect as of their effective date and as of the date hereof and the Company Group has fully complied with all such representations and certifications in all material respects;

(iv) the Company Group is, and has been since its incorporation, in compliance in all material respects with all requirements of applicable Laws pertaining to each Government Contract and Government Bid and all requirements of Governmental Entities regarding such applicable Laws with respect to each Government Contract and Government Bid;

(v) to the Company's Knowledge, there exists no basis for a claim of any material Liability by any Governmental Entity as a result of defective cost or pricing data submitted or failed to be submitted in connection with any Government Contract or Government Bid;

(vi) no Government Contract to which the Company Group is a party has been the subject of a termination for default, and the Company Group has not received any written demand for cure or show cause regarding performance of a Government Contract or any written (or, to the Company's Knowledge, oral) notice of or claim for or assertion of a condition of default, a breach of contract, a violation of any applicable Laws, or a violation of a contract requirement (including, but not limited to, all provisions and requirements incorporated expressly, by reference or by operation of Law therein) in connection with a Government Contract or Government Bid, whether from a Governmental Entity or from any prime contractor, subcontractor, vendor or other third party; and

(vii) to the Company's Knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would reasonably be expected to result in a condition of default or breach of contract or a material violation of any Government Contract term or condition or any applicable Laws with respect to a Government Contract or Government Bid.

(c) Internal Controls, Audits and Investigations.

(i) The Company Group has not (i) undergone and is not undergoing any audit, inspection, survey or examination of records by any Governmental Entity relating to any Government Contract and involving defective pricing, the Price Reduction clause in any Federal Supply Schedule contract or Task Order issued thereunder, fraud, deception, dishonesty, willful misconduct, criminal activity or any allegation thereof; or (ii) received written notice of, and has not undergone, any investigation or review relating to any Government Contract and involving defective pricing, the Price Reduction clause in any Federal Supply Schedule contract or Task Order issued thereunder, fraud, deception, dishonesty, willful misconduct, criminal activity or any allegation thereof. No such audit, review, inspection, investigation, survey or examination of records has been threatened against the Company Group in writing. The Company Group has not received any official notice that it is or was being specifically audited or investigated by any Governmental Entity, any state or federal agency Inspector General, the contracting officer with respect to any Government Contract, or the Department of Justice (including any United States Attorney).

(ii) The Company Group has not made a material misstatement or omission or violated the False Claims Act or the False Statements Act and to the Company's Knowledge, there are no circumstances that would reasonably be expected to warrant allegation of fraud in connection with any Government Contract or Government Bid.

(d) Debarment, Suspension and Exclusion.

(i) The Company Group has never been, and is not now the subject of a debarment, suspension or exclusion from participation in programs funded by any Governmental Entity or in the award of any Government Contract, nor has it been listed on any list of parties excluded or otherwise declared ineligible to participate in government-funded programs nor, to the Company's Knowledge, has any such debarment, suspension or exclusion proceeding or proposed listing been initiated or threatened against the Company Group since the Company Group's incorporation.

(ii) No determination has been made by a Governmental Entity that the Company Group is nonresponsible or ineligible for award of a Government Contract, nor, to the Company's Knowledge, do any circumstances exist that would reasonably be expected to warrant the institution of debarment, suspension or exclusion proceedings or any finding of nonresponsibility or ineligibility with respect to the Company Group in the future.

(iii) The Company Group is in compliance in all material respects and has, during all periods for which any applicable statute of limitations has not expired, complied with the applicable provisions of the U.S. Foreign Corrupt Practices Act, as amended, and other applicable foreign Laws relating to corrupt practices and similar matters.

**Section 4.15 Insurance Policies.**

(a) Schedule 4.15(a) contains a complete and correct list of all insurance policies carried by or for the benefit of the Company Group or any of its assets, specifying the insurer, policy number, amount of and nature of coverage, the risk insured against, the deductible amount (if any) and the date through which coverage will continue by virtue of premiums already paid. The Company Group reasonably believes that it maintains insurance with reputable insurers for all risks normally insured against, and in amounts normally carried, by Persons of similar size engaged in similar lines of business. Schedule 4.15(a) also sets forth all relevant information as to the nature and approximate amount of all claims for insured losses sustained by the Company Group during the five (5) year period immediately preceding the Closing, including, but not limited to, claims relating to errors and omissions, fidelity bond, workers' compensation, automobile and general liability. All such insurance policies and bonds are in full force and effect and will be maintained by the Company Group in full force and effect as they apply to any matter, action or event relating to the Company Group occurring through the Closing Date, and the Company Group has not reached or exceeded its policy limits for any insurance policies in effect at any time during the past five (5) years. Except as disclosed on Schedule 4.15, there is no claim by the Company Group pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. All premiums payable under all such policies and bonds have been timely paid, and the Company Group has otherwise materially complied fully with the terms and conditions of all such policies and bonds. To the Company's Knowledge, there is no threatened termination of, premium increase with respect to, or material alteration of coverage under, any of such policies or bonds.

(b) Schedule 4.15(a) contains a true, correct and complete list of all policies of liability, theft, fidelity, business interruption, life, fire, product liability, workers compensation, health and other material forms of insurance required to be held by the Company Group pursuant to any Contract with a customer, vendor, payor or supplier.

**Section 4.16 Environmental, Health and Safety Matters**

Except as set forth in Schedule 4.16:

(a) the Company Group possesses, and is in compliance with, all Permits required under Environmental Laws and has filed all notices that are required under Environmental Laws, and the Company Group is in compliance with all applicable limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any Law, regulation, code, plan, order, decree, judgment, notice, permit or demand letter issued, entered, promulgated or approved thereunder;

(b) no notice, notification, demand, request for information, citation, summons or Order has been received, no complaint has been filed, no penalty has been assessed and no investigation, action, claim, suit, Proceeding or review is pending or, to the Company's Knowledge, threatened by any Governmental Entity or other Person with respect to any matters relating to the Company Group and relating to or arising out of any Environmental Law;

(c) there are no Liabilities arising in connection with or in any way relating to the Company Group or the Leased Real Property of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, arising under or relating to any Environmental Law, and there are no facts, events, conditions, situations or set of circumstances, including notice of actual or threatened Liability under CERCLA or any similar foreign, state or local statute or ordinance from any Governmental Entity or any third party, which could reasonably be expected to result in or be the basis for any such Liability;

(d) no Hazardous Material has been discharged, disposed of, dumped, injected, pumped, deposited, spilled, leaked, emitted or released at, on or under any Leased Real Property or any other property now or previously owned, leased or operated by the Company Group;

(e) the Company Group has not imported, manufactured, stored, used, operated, transported, treated or disposed of any Hazardous Materials other than in compliance with all Environmental Laws;

(f) the Company Group has not provided a guarantee and is not otherwise subject to any material liability of another Person or subject to an outstanding indemnity with respect to any material liability, in each case relating to Environmental Law or Hazardous Materials; and

(g) the Company Group has made available to Buyer all reports of environmental assessments, investigations, and audits in the Company Group's possession related to the Leased Real Property or any other property now or previously owned, leased or operated by the Company Group.

For purposes of this Section 4.16, the term "Company" and "Company Group" shall include any entity that is, in whole or in part, a predecessor of the Company or any Subsidiary of the Company.

#### **Section 4.17 Intellectual Property.**

(a) The Company Group owns all right, title, and interest in, or has a valid and enforceable written license or other permission to use, all Company Intellectual Property. The Company Group is the sole and exclusive owner of all Owned Intellectual Property, free and clear of all Liens, other than Permitted Liens. None of the Owned Intellectual Property has been adjudged to be invalid or unenforceable nor has any such Owned Intellectual Property been cancelled, in whole or in part, and the Owned Intellectual Property is valid, subsisting and enforceable.

(b) Schedule 4.17(b) sets forth an accurate and complete list of the Registered Intellectual Property and material unregistered Owned Intellectual Property, including the jurisdiction where each item of such Registered Intellectual Property is registered or filed, the applicable patent or registration number and application number, the record owner, and the legal or beneficial owner and any action, filing and payment that must be taken or made within six (6) months after the Closing with respect to the Registered Intellectual Property, including any deadline to file a new application in any jurisdiction (it being understood that the Company Group shall provide such schedule on the date hereof that is based on the Company Group's estimate of when the Closing will occur and an updated version of such schedule on the Closing). All Registered Intellectual Property has been maintained effective by the filing of all necessary filings, maintenance, and renewals, and timely payment of requisite fees. No loss or expiration of any Owned Intellectual Property is threatened, pending, or reasonably foreseeable, except for patents expiring at the end of their statutory terms, and not as a result of any act or omission by the Company Group (including failure by the Company Group to pay any required maintenance fees).

(c) The Company Group has taken all reasonably necessary action to maintain and protect all of the Company Intellectual Property. The Company has taken commercially reasonable measures to protect (i) the confidentiality of all trade secrets and any other confidential information that is Owned Intellectual Property and (ii) any confidential information owned by any Person to whom the Company Group has a confidentiality obligation. No such trade secrets or confidential information have been disclosed by the Company to any Person other than pursuant to a written agreement restricting the disclosure and use of such trade secrets and confidential information by such Person. Except as set forth on Schedule 4.17(c), no Person (including current and former founders, employees, contractors, and consultants of the Company Group) has any right, title, or interest, directly or indirectly, in whole or in part, in any Company Intellectual Property. All Persons who have created any Intellectual Property for or on behalf of the Company Group have executed valid and enforceable written assignments of any such Intellectual Property and waivers of all moral rights to the Company Group, and the Company Group has delivered true and complete copies of such assignments to the Buyer. To the Company's Knowledge, no Person is in violation of any such confidentiality or assignment agreements.

(d) No funding, facilities, or personnel of any Governmental Entity or any university or other educational institution or research organization has been used in connection with the development of any Owned Intellectual Property and the Company Group and its predecessors have not participated in any standards setting organization, except that the Company is an advisor to the International Marine Contractors Association. No Governmental Entity, university or other educational institution, research organization or standards setting organization has any right, title or interest in or to any Owned Intellectual Property.

(e) All Owned Software (i) conforms in all material respects with all specifications, representations, warranties, and other descriptions established by the Company Group or conveyed thereby to its customers or other transferees, (ii) is operative for its intended purpose, free of any material defects, and does not contain any Malicious Code; and (iii) has been maintained by the Company Group in accordance with its contractual obligations to customers or other transferees and industry standards.



(f) No Person other than the Company Group possesses a copy, in any form (print, electronic, or otherwise), of any source code for any Owned Software, and all such source code has been maintained strictly confidential. The Company Group has no obligation to afford any Person access to any such source code. The Company Group is in possession of all documentation and other materials relating to the Software used in the business of the Company that is reasonably necessary for the use, maintenance, enhancement, development, and other exploitation of such Software as used in, or currently under development for, the business of the Company Group, including installation and user documentation, engineering specifications, flow charts, programmers' notes, and know-how.

(g) Except as set forth on Schedule 4.17(g), no Publicly Available Software has been incorporated in, linked to, distributed with, or otherwise used in connection with any Owned Software or any product or service of the Company Group in any manner that may (i) require, or condition the use or distribution of any Owned Software or any such product or service on the disclosure, licensing, or distribution of any source code for any portion of such Owned Software, product, or service or (ii) otherwise impose any material limitation, restriction, or condition on the right or ability of the Company Group to use, allow third parties to use, distribute, or enforce any Owned Intellectual Property in any manner.

(h) The Company IT Assets are operational, fulfill the purposes for which they were acquired or developed, have security, back-ups, and disaster recovery arrangements in place and hardware and Software capacity, support, maintenance, and trained personnel which are sufficient in all material respects for the current of the business of the Company Group. The Company Group has disaster recovery, data back-up, and security plans, procedures, and facilities and has taken reasonable steps consistent with or exceeding industry standards to safeguard the availability, security, and integrity of the Company IT Assets and all data and information stored thereon, including from unauthorized access and infection by Malicious Code. The Company Group has maintained in the ordinary course of business all required licenses and service contracts, including the purchase of a sufficient number of license seats for all Software, with respect to the Company IT Assets. The Company IT Assets have not suffered any material failure within the last five years.

(i) The Company Group, and the former and current conduct of the business of the Company Group and the products and services thereof, including the manufacture, importation, use, offer for sale, sale, licensing, distribution, and other commercial exploitation of such products and services and the Company Intellectual Property have not infringed, misappropriated, or otherwise violated, and do not infringe, misappropriate, or otherwise violate, any Intellectual Property rights or rights of publicity of any Person. The Company Group is not the subject of any pending legal proceeding that either alleges a claim of infringement, misappropriation, or other violation of any Intellectual Property or rights of publicity of any Person, or challenges the ownership, use, patenting, registration, validity, or enforceability of any Owned Intellectual Property, and no such claims have been asserted or threatened against the Company Group within the last five years. No Person has notified the Company Group in writing that any of such Person's Intellectual Property rights or right of publicity are infringed, misappropriated, or otherwise violated by the Company Group or that the Company Group requires a license to any of such Person's Intellectual Property rights. To the Company's Knowledge, no Person has infringed, misappropriated or otherwise violated, or is infringing, misappropriating or otherwise violating, any Owned Intellectual Property. No written or oral claims alleging any infringement, misappropriation, or other violation have been made against any Person by the Company Group within the last five years.

(j) The consummation of the transactions contemplated hereby will not result in the loss or impairment of the Company Group's right to own or use any Company Intellectual Property. Immediately subsequent to the Closing, the Company Intellectual Property will be owned or available for use by the Company Group on terms and conditions identical to those under which the Company Group owns or uses the Company Intellectual Property immediately prior to the Closing, without payment of additional fees.

(k) The Company Group is, and for the previous five (5) years has been, in compliance with all applicable Privacy and Security Requirements in all material respects. The Company Group, and to the Company's Knowledge any third-party Processing Protected Data on behalf of the Company Group, has not experienced any Security Breaches, and the Company Group is not aware of any notices or complaints from any Person regarding such a Security Breach. The Company Group has not received any notices or complaints from any Person regarding the unauthorized Processing of Protected Data or non-compliance with applicable Privacy and Security Requirements.

(l) The Company Group has valid and legal rights to Process all Protected Data that is Processed by or on behalf of the Company Group in connection with the use and/or operation of its products, services and business, and the execution, delivery, or performance of this Agreement will not affect these rights or violate any applicable Privacy and Security Requirements. The Company Group has implemented, and has required all third parties that receive Protected Data from or on behalf of Company Group to implement, reasonable physical, technical and administrative safeguards consistent with industry standards that are designed to protect Protected Data from unauthorized access by any Person, and to ensure compliance in all material respects with all applicable Privacy and Security Requirements.

#### **Section 4.18 Transactions with Affiliates.**

Except as set forth in Schedule 4.18, no officer or director of the Company Group, or any person with whom any such officer or director has any direct or indirect relation by blood, marriage or adoption, or any entity in which any such Person owns any beneficial interest (other than a publicly held corporation whose stock is traded on a national securities exchange or in the over-the counter market and less than five percent (5%) of the stock of which is beneficially owned by all such Persons in the aggregate) or any Affiliate of any of the foregoing or any current or former Affiliate of the Company Group have any interest in: (a) any Contract, arrangement or understanding with, or relating to, the Company Group, its business or assets; (b) any loan, arrangement, understanding, agreement or Contract for or relating to the Company, its business or assets; or (c) any property (real, personal or mixed), tangible or intangible, used or currently intended to be used by the Company Group. Schedule 4.18 also sets forth a complete list of all accounts receivable, notes receivable and other receivables and accounts payable owed to or due from any Affiliate to the Company Group.

#### **Section 4.19 Undisclosed Payments.**

Neither the Company Group nor the officers or directors of the Company Group nor anyone acting on behalf of any of them, has made or received any payments not fully disclosed in the Company Group's books and records consistent with historical practices of the Company.

#### **Section 4.20 Customer and Supplier Relations.**

##### **(a) Customers.**

(i) Schedule 4.20(a) sets forth the names of the top ten (10) customers (which term, for purposes of this Section 4.20, includes distributors) of the Company Group by dollar purchase volume (measured by the gross amount invoiced to the customer during the applicable period) that purchased products or services from the Company Group during the year ended December 31, 2022 (such customers being the "Top Customers"), together with the amount of such dollar purchase volume.

(ii) Other than as expressly set forth in the agreements with the Top Customers, there are no special warranties, payment terms, agreements to return or exchange goods, consignment arrangements, course of dealing terms that vary substantially from the terms of the applicable contract or similar understandings with any Top Customer.

(iii) True and correct copies of all Contracts currently in effect with the Top Customers have been provided to Buyer.

(iv) The Company Group maintains good relations with each of the Top Customers, and to the Company's Knowledge, no event has occurred that would materially and adversely affect the Company Group's relations with any such Top Customer. Since the Latest Balance Sheet Date, none of the Top Customers has canceled, terminated or, to the Company's Knowledge, made any threat to any employee of the Company Group to: (A) cancel or otherwise terminate its Contract or (B) cancel or otherwise terminate its business relationship with the Company Group or (C) decrease its usage of the Company Group's services or products. Except as set forth on Schedule 4.20(a), none of the Top Customers has advised the Company, whether verbally or in writing, that it (x) intends during the twelve (12)-month period immediately following the date hereof to cease purchasing any products of the Company Group or to reduce its purchases from the Company Group by more than five percent (5%), on an annualized basis, from its annualized dollar purchase volume during the year ended December 31, 2022; (y) has elected or will elect to source more than five percent (5%) of its requirements that were previously sourced from the Company Group from other suppliers; or (z) will require the Company Group during the twelve (12)-month period immediately following the date hereof to reduce prices or otherwise adversely change the terms of sale to such Top Customer as a condition of obtaining business or retaining existing business; it being understood that nothing in this Section 4.20(a) constitutes a guarantee of continuing business from any Top Customer.

(b) Top Suppliers.

(i) Schedule 4.20(b) sets forth the names and addresses of the top ten (10) suppliers by dollar purchase volume (measured by the gross amount invoiced to the Company Group by such supplier during the applicable period) from which the Company Group ordered raw materials, components, supplies, merchandise, finished goods or other goods and services ("Goods") during the year ended December 31, 2022 (the "Top Suppliers"), together with a brief description of the Goods provided.

(ii) Other than as expressly set forth in the agreements with the Top Suppliers, there are no special warranties, payment terms, agreements to return or exchange goods, consignment arrangements, course of dealing terms that vary substantially from the terms of the applicable contract or similar understandings with any Top Supplier.

(iii) True and correct copies of all Contracts currently in effect with the Top Suppliers have been provided to Buyer.

(iv) To the Company's Knowledge, the Top Suppliers have sufficient manufacturing capacity to meet the requirements of the Company Group as presently conducted. To the Company's Knowledge, the Top Suppliers will be able to deliver goods and services to the Company Group at prices no greater than those set forth in their existing Contracts with the Company Group or, in the absence of such Contracts, the prices charged to the Company Group during the year ending December 31, 2022 in sufficient quantities to meet the requirements of the Company Group as presently conducted; provided, however, that this representation will not apply to price increases in the ordinary course of business by a Top Supplier as a result of inflationary or other economic factors. The Company Group has not experienced, and to the Company's Knowledge there do not exist, any material quality control or similar problems with the products currently being supplied or on order from any of the Top Suppliers.

(v) The Company Group maintains good relations with each of the Top Suppliers, and to the Company's Knowledge, no event has occurred that would materially and adversely affect the Company Group's relations with any such Top Supplier. Since the Latest Balance Sheet Date, none of the Top Suppliers has canceled, terminated or made any threat to: (A) cancel or otherwise terminate its Contract or (B) cancel or otherwise terminate its business relationship with the Company Group. None of the Top Suppliers (w) has advised the Company Group, whether verbally or in writing, that any Top Supplier intends to refuse or otherwise fail to supply Goods to the Company at any time after the Closing Date in a manner consistent with past practices during the year ended December 31, 2022; (x) has advised the Company Group, whether verbally or in writing, that it intends to make such sales on terms materially different than they have during the year ending December 31, 2022; (y) has breached its obligations to the Company Group in any material respect since the Latest Balance Sheet Date that was not cured after a reasonable period after notice from the Company Group; or (z) has at any time since the Latest Balance Sheet Date failed to comply with the quality, quantity or delivery standards of the Company Group in any material respects.

**Section 4.21 US Employee Matters.**

(a) Schedule 4.21(a) contains a true and complete list of all of the employees and independent contractors of the Company as of the date of this Agreement, specifying the position for such employee or independent contractor and, classification as exempt or non-exempt under the United States Fair Labor Standards Act of 1938, as amended. Except as set forth on Schedule 4.21(a)-2, the Company has not made any written or oral commitment to any employee or independent contractor with respect to compensation, promotion, retention, termination, severance or similar matters in connection with the transactions contemplated by this Agreement. The Company maintains, in all respects, accurate and complete Form I-9s with respect to each of its former and current employees in accordance with applicable laws concerning immigration and employment eligibility verification obligations.

(b) The employees of the Company have not been, and currently are not, represented by any labor organization or group whatsoever. The Company has not been and is not a signatory to any collective bargaining agreement, and no union organizing campaign or other attempt to organize or establish a labor union, employee organization or labor organization involving or representing employees of the Company has occurred, is in progress or is threatened. The Company has not engaged in any unfair labor practices under applicable Laws. The Company has not implemented any plant closing or layoff of employees that could implicate the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local Law. There is no lockout or, to the Company's Knowledge, any threatened lockout of any employees of the Company, and no such action is contemplated by the Company or its Affiliates.

(c) No workers' compensation or retaliation claim, complaint, charge or investigation has been filed, threatened to be brought or filed, or is pending against the Company, and the Company has maintained and currently maintain adequate insurance as required by applicable Law with respect to workers' compensation claims and unemployment benefits claims.

(d) The Company is in compliance with all applicable Laws, regulations and orders and all contracts governing or concerning conditions of employment, employment discrimination and harassment, wages, hours or occupations safety and health, including, without limitation, ERISA, the Immigration Reform and Control Act of 1986, the National Labor Relations Act, the Civil Rights Acts of 1866 and 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, the Davis Bacon Act, the Walsh-Health Act, the service Contract Act, Executive Order 11246, the FLSA and the Rehabilitation Act of 1973 and all regulations under such acts.

(e) There is no charge, complaint, mediation or Proceeding, with respect to or relating to the Company pending before the Equal Employment Opportunity Commission or any other Governmental Entity responsible for the prevention of unlawful or discriminatory employment practices or compliance with other employment-related matters, nor have there been any such charges, complaints, mediations, or Proceedings within the last three (3) years. The Company has not received any written notice of the intent of any Governmental Entity responsible for the enforcement of labor or employment Laws to conduct an investigation, audit or other inquiry relating to the Company within the last three (3) years, and, to the Company's Knowledge, no such investigation, audit or other inquiry is in progress or threatened in any manner.

(f) The Company has investigated all sexual harassment or other harassment, discrimination, retaliation, or policy violation allegations of which it was aware in the past three (3) years. With respect to each such allegation that the Company has reasonably deemed to have potential merit after appropriate investigation, the Company has taken prompt corrective action that is reasonably calculated to prevent further improper action. The Company does not reasonably expect any material liability with respect to any such allegations and is not aware of any allegations relating to its current or former employees that, if known to the public, would bring the Company into material disrepute.

(g) The Company has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries, and other payments to employees and is not liable for any arrears of wages, compensation, Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company has paid in full to all employees, independent contractors and consultants all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, independent contractors and consultants.

(h) Each person who has provided or is providing services to the Company, and has been classified as a consultant, independent contractor or temporary employee, has been properly classified as such under all applicable Laws including relating to wage and hour and Tax. The Company has no liability or obligations under any applicable Laws arising out of treating any such person as a consultant, independent contractor or temporary employee, as applicable, and no such person is entitled to any compensation or benefits that such person has not been afforded under any applicable Laws or benefit plan or program of the Company. The Company is not liable for any payment to any trust or other fund or to any governmental entity with respect to unemployment compensation benefits, social security or other benefits or obligations for Company personnel (other than routine payments to be made in the ordinary course of business and consistent with past practice).

(i) Schedule 4.21(i) contains a true and complete list of each Company Benefit Plan. Except as set forth on Schedule 4.21(i):

(i) all such Company Benefit Plans are in full force and effect and are, and have been, operated, established, administered and funded in compliance with all applicable provisions of ERISA, the Code and other applicable Law, and, to the Company's Knowledge, no event has occurred and there exists no condition or set of circumstances which has resulted in or which would reasonably be expected to result in the imposition of any liability on the Company under ERISA, the Code or other applicable Law with respect to such Company Benefit Plans;

(ii) the 3D At Depth, Inc. 401(k) Plan is intended to be qualified under Section 401(a) of the Code is a prototype or volume submitter plan and can rely on an opinion or advisory letter from the Internal Revenue Service (the "IRS"), and, to the Company's Knowledge, there are no existing circumstances or any events that have occurred that would reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan;

(iii) all contributions, distributions, reimbursements and/or payments required to be made under the terms of any Company Benefit Plans have been timely made or have been properly accrued and reflected in the Company's Financial Statements in accordance with the terms of the applicable Company Benefit Plans and applicable Law;

(iv) there are no pending or, to the Company's Knowledge, threatened, audits or investigations by any Governmental Entity involving any of the Company Benefit Plans, and there are no pending or, to the Company's Knowledge, threatened claims (except for individual claims for benefits payable in the normal operation of the Company Benefit Plans) or Proceedings involving any Company Benefit Plans or any fiduciary thereof, nor are there any facts that could reasonably be expected to form the basis for any such claim or Proceeding;

(v) no Company Benefit Plan provides benefits to any Person who is not a current or former employee, individual consultant, or individual independent contractor of the Company, or a dependent or beneficiary of any such current or former employee;

(vi) No Company Benefit Plan is a source of unfunded benefit liability that may be attributable to the Company, and no non-exempt prohibited transaction (within the meaning of Section 406 of ERISA and Section 4975 of the Code), no breach of fiduciary duty, and no reportable event, as defined in ERISA, has occurred in connection with any Company Benefit Plan;

(vii) no Company Benefit Plan has ever provided health care or other non-pension benefits to any current or former employee, director, or officer (or other dependent or beneficiary) after their employment is terminated, except as required by Law or for health care continuation coverage under the requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

(j) Except as set forth on Schedule 4.21(j), neither the Company nor any of its ERISA Affiliates has or, has had within the last six (6) years, an obligation to contribute to or any Liability (whether actual or contingent) under or with respect to any (i) "multiemployer plan" (as such term is defined in Section 4001(a)(3) or 3(37) of ERISA), (ii) "multiple employer plan" (as such term is defined in Section 4063 or 4064 of ERISA), (iii) "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, or (iv) "multiple employer welfare arrangement" (as such term is defined in Section 3(40) of ERISA).

(k) With respect to each Company Benefit Plan, the Company has made available to Buyer complete and accurate copies of the following, to the extent applicable: (i) the current plan document and adoption agreement, and any amendments thereto (or a summary of the key terms for any unwritten Company Benefit Plan), (ii) the most recent summary plan description and any summaries of material modification thereto, (iii) the most recent determination or opinion letter received from the IRS, if any, (iv) the most recent annual report (Form 5500) with all attachments, if available, (v) the three (3) most recent compliance testing results, if any, and (vi) any material notices, letters, or other correspondence with or from any Governmental Entity.

(l) Each contract, arrangement, or plan of the Company that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A of the Code) is in documentary and operational compliance with Section 409A of the Code and the applicable guidance issued thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any employee, officer, director, independent contractor, or other service provider for any excise taxes, interest, or penalties incurred pursuant to Section 409A or Section 4999 of the Code.

(m) Except as set forth on Schedule 4.21(m), the execution of this Agreement and the consummation of the transactions contemplated hereunder will not (either alone or upon the occurrence of any additional events) (i) entitle any current or former director, officer, employee, individual independent contractor or individual consultant to payment of any severance, compensation, transaction, retention, or change in control payment, or other benefit payable by a shareholder of the Company, (ii) accelerate the time of funding, vesting or payment of any compensation or benefits under any of the Company Benefit Plans to any current or former director, officer, employee, individual independent contractor or individual consultant, or (iii) result in the payment of compensation that would, in combination with any other payment, result in an “excess parachute payment” within the meaning of Section 280G(b) of the Code.

(n) (i) The Company has no obligations in respect of any unfunded deferred compensation, retirement or pension liabilities under any employee benefit plan or in respect of post-retirement liabilities under any applicable Laws; and except as to items already included in the Final Closing Working Capital, (ii) there are no amounts due to or in respect of current or former employees of the Company, including (v) accrued and unpaid vacation, (w) accrued and unpaid bonuses or commissions, (x) any other bonus or commission amounts related to the pre-Closing period (irrespective of whether accrued), (y) 401(k) matching and profit sharing contributions and (z) severance payments or other similar obligations related to the termination of any former employees (including the employer portion of any related payroll and other employment Taxes for the foregoing items (v) through (z)).

#### **Section 4.22 Permits.**

Except as set forth on Schedule 4.22, the Company Group has all Permits necessary for its operations in the conduct of its business, such Permits are valid, binding and in full force and effect and no violations are or have been recorded in respect of any thereof, and no Proceeding is pending or threatened to revoke or limit any thereof. The Company Group has taken all necessary action to maintain each Permit. Schedule 4.22 contains a true, correct and complete list of all such Permits under which the Company Group is operating or bound, and the Company Group has furnished or made available to Buyer true and correct copies of the Permits required to be set forth on Schedule 4.22. To the Company’s Knowledge, there is no proposed change in any applicable Law which would require the Company Group to obtain any Permits not set forth on Schedule 4.22 in order to conduct its business as presently conducted. Except as set forth on Schedule 4.22, none of the Permits required to be set forth on Schedule 4.22 shall be adversely affected as a result of the Company Group’s execution and delivery of, or the performance of its obligations under, this Agreement or the consummation of the transactions contemplated hereby. No loss or expiration of any Permit is threatened, pending or reasonably foreseeable.

#### **Section 4.23 Notes, Accounts Receivable and Accounts Payable.**

(a) Notes. There are no notes receivable of the Company Group owing by any director, officer, shareholder or employee of the Company Group.

(b) Accounts Receivable. Schedule 4.23(b) sets forth the accounts receivable of the Company Group as of September 20, 2023 (the “Receivables”) showing the amount of each Receivable and an aging of amounts due thereunder, which schedule is true and complete as of that date. Except as set forth in Schedule 4.23(b), to the Company’s Knowledge, the debtors to which the Receivables relate are not in or subject to a bankruptcy or insolvency proceeding, and none of the Receivables has been made subject to an assignment for the benefit of creditors. Except as set forth in Schedule 4.23(b), all Receivables that are reflected on the Latest Balance Sheet (net of any reserves shown thereon) (i) are valid, existing and to the Company’s Knowledge, fully collectible in a manner consistent with the Company Group’s past practice without resort to legal proceedings or collection agencies, (ii) represent monies due for goods sold and delivered or services rendered in the ordinary course of business, and (iii) are not subject to any refunds or adjustments or any defenses, rights of set-off, assignment, restrictions, security interests or other Liens, except for Permitted Liens. Except as set forth in Schedule 4.23(b), all such Receivables are (x) current, and there are no disputes regarding the collectability of any such Receivables and (y) adequately reserved for cancellations and bad debt. Except as set forth in Schedule 4.23(b), the Company has not factored any of the Company’s Receivables.

(c) Accounts Payable. The accounts payable of the Company Group reflected on the Latest Balance Sheet arose from bona fide transactions in the ordinary course of business.

**Section 4.24 Brokers, Finders and Investment Bankers**

Except as set forth on Schedule 4.24, neither the Company Group nor any officers, directors or employees of the Company Group nor any Affiliate of the Company Group has employed any broker, finder or investment banker or incurred any Liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with the transactions contemplated by this Agreement.

**Section 4.25 Product and Service Warranties**

Except as set forth in Schedule 4.25, the Company Group does not make any express warranties or guaranties on its own behalf as to products sold or services provided, and there is no pending or, to the Company's Knowledge, threatened claim alleging any breach of any such warranty or guaranty. Except as set forth in Schedule 4.25, the Company Group has no material exposure to Liability under any such warranty beyond that which is typically assumed in the ordinary course of business by Persons engaged in comparable businesses or which would have an adverse effect on the Company Group.

**Section 4.26 Taxes**

(a) The Company Group has filed (or caused to be filed) all Tax Returns for all Pre-Closing Tax Periods required to be filed on or prior to the Closing Date (taking into account any extension of time to file) and all such Tax Returns are true, complete and correct in all material respects.

(b) The Company Group has timely paid (or caused to be timely paid) all Taxes (whether or not shown on any Tax Return), for all Pre-Closing Tax Periods that will have been required to be paid on or prior to the Closing Date. The Company Group has complied in all respects with all applicable Laws relating to the collection, withholding and payment of Taxes (such as sales or use Taxes or Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, stockholder or any other third party). The Company Group has complied, in all material respects, with all reporting, recordkeeping, information, reporting and backup withholding requirements relating thereto under applicable Law. Neither the Company nor any Subsidiary of the Company have deferred the payment of any payroll taxes pursuant to Section 2302 of the CARES Act.

(c) The Company Group has established, in accordance with historical practices of the Company applied on a basis consistent with that of preceding periods, adequate reserves for the payment of all Tax Liabilities that are incurred in or attributable to the Pre-Closing Tax Period (or, with respect to a Straddle Period, to the portion of such period up to and including the Closing Date). Schedule 4.26(c) sets forth as of the Closing Date those taxable years for which the Company's or its Subsidiaries' Tax Returns are currently being audited by any taxing authority and any assessments or threatened assessments in connection with such audit, or otherwise currently outstanding.



(d) No written claim has ever been made by any Tax authority in a jurisdiction in which the Company or a Subsidiary of the Company does not file Tax Returns that the Company or such Subsidiary of the Company, as applicable, is or may be subject to taxation by that jurisdiction, and no basis exists for any such claim to be made.

(e) No Tax authority has provided written notice of any issues in connection with any Tax Return relating to Taxes that would affect the Post-Closing Tax Period; there are no threatened nor pending Tax audits, examinations, assessments, administrative or judicial claims, Proceedings, or investigations with respect to Taxes (each a, "Tax Proceeding") and no waivers of statutes of limitations have been given that would affect the Post-Closing Tax Period and neither the Company nor any Subsidiary of the Company has otherwise agreed to any extension of time with respect to a Tax assessment or deficiency that would affect the Post-Closing Tax Period.

(f) Neither the Company nor any Subsidiary of the Company has filed any amended Tax Return or other claim for a refund as a result of, or in connection with, the carry back of any net operating loss or other attribute to a year prior to the taxable year including the Closing Date under Section 172 of the Code, as amended by Section 2303 of the CARES Act, or any corresponding or similar provision of state, local or non-U.S. Law.

(g) The Company Group has (i) to the extent applicable, complied with all legal requirements in order to defer the amount of the employer's share of any "applicable employment taxes" deferred by any the Company under Section 2302 of the CARES Act, (ii) to the extent applicable, complied with all legal requirements and duly accounted for any available Tax credits claimed by the Company Group under Sections 7001 through 7005 of the Families First Act, and (iii) not received or claimed any Tax credits under Section 2301 of the CARES Act.

(h) Neither the Company nor any Subsidiary of the Company has requested or received any letter ruling, administrative relief, technical advice or consent to any change of any method of accounting from the Internal Revenue Service (or any comparable item from any other Tax authority).

(i) There are no Liens for Taxes upon any of the Company's assets nor upon any assets owned by a Subsidiary of the Company. No assets are escheatable to any Governmental Entity.

(j) None of the Company, its Subsidiaries nor any of their respective predecessors is liable for any Taxes: (i) under any agreement (including any Tax sharing, indemnity or allocation agreements), (ii) as a transferee or successor by Contract, Law or otherwise or (iii) under Treasury Regulation Section 1.1502-6(a) or any analogous or similar state, local or foreign Law or regulation.

(k) Neither the Company nor any Subsidiary of the Company has been a party to (i) any "reportable transaction", (ii) a "listed transaction", or (iii) a transaction where a "significant purpose of which is the avoidance or evasion of United States federal income tax" as defined in Sections 6662, 6662A, 6011, 6012, 6111, or 6707A of the Code or the Treasury Regulations promulgated thereunder or pursuant to notice or other guidance published by the Internal Revenue Service (irrespective of the effective dates).

(l) The Company is (and has been at all times since its conversion from its original entity structure as a limited liability company in 2017) classified for U.S. federal income tax purposes as a C corporation, and no Person has ever taken a position on any Tax Return or examination or other administrative or judicial proceeding that is inconsistent with such treatment.

(m) Neither the Company nor any Subsidiary of the Company has been, in the past five (5) years, a party to a transaction reported or intended to qualify as a reorganization under Code Section 368. Neither the Company nor any Subsidiary of the Company has distributed stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code Section 355 or Code Section 361.

(n) Neither the Company nor any Subsidiary of the Company is required to include an item of income or exclude an item of deduction, for any period after the Closing Date as a result of (i) an installment sale transaction occurring on or before the Closing reported as an open transaction for U.S. federal income tax purposes (or any other similar doctrine under state, local, or non-U.S. Laws); (ii) a transaction occurring on or before the Closing reported as an open transaction for U.S. federal income tax purposes (or any similar doctrine under state, local, or non-U.S. Laws); (iii) any prepaid amounts received or paid on or prior to the Closing Date or deferred revenue realized on or prior to the Closing Date (other than with respect to items included in the Adjustment Amount); (iv) an adjustment under Code Section 481 as a result of a change in method of accounting; or (v) an agreement entered into with any Governmental Entity (including a “closing agreement” under Code Section 7121 or any “gain recognition agreements” entered into under Code Section 367) on or prior to the Closing Date. Neither the Company nor any Subsidiary of the Company has “long-term contracts” that are subject to a method of accounting provided for in Code Section 460 and has not deferred any income pursuant to IRS Revenue Procedure 2004-34, Treasury Regulation Section 1.451-5, Code Section 455, Code Section 456, or any corresponding or similar provisions of Law. The Company Group uses the cash basis method of accounting for income Tax purposes.

(o) The Company’s non-U.S. Subsidiary is not, nor at any time has been, a “passive foreign investment company” within the meaning of Section 1297 of the Code. The Company’s non-U.S. Subsidiary is not, nor at any time has been, engaged in the conduct of a trade or business within the United States within the meaning of Code Sections 864(b) or 882(a), or considered to be so engaged under Code Sections 882(d) or 897 or otherwise. The Company’s non-U.S. Subsidiary does not have, nor at any time has had, an investment in “United States property” within the meaning of Code Section 956(b).

(p) The prices and terms for the provision of any property or services undertaken between the Company and its non-U.S. Subsidiary are at arm’s length for the purposes of the relevant transfer pricing Laws, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained.

(q) Each Person providing services to the Company or any Subsidiary of the Company has been properly classified as an employee or independent contractor, as the case may be, for Tax purposes.

(r) Schedule 4.26(r) sets forth a list of the jurisdictions of formation and entity classification of the Company and its Subsidiaries for U.S. federal income tax purposes.

#### **Section 4.27 Ethical Practices.**

Neither the Company Group nor any representative thereof has offered or given, and to the Company’s Knowledge no Person has offered or given on its behalf, anything of value to: (a) any official of a Governmental Entity, any political party or official thereof, or any candidate for political office; (b) any customer, payor or member of the government; or (c) any other Person, in any such case while knowing or having reason to know that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly, to any customer, payor, member of the government or candidate for political office for the purpose of the following: (x) influencing any action or decision of such Person, in such Person’s official capacity, including a decision to fail to perform such Person’s official function; (y) inducing such Person to use such Person’s influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality to assist the Company Group in obtaining or retaining business for, or with, or directing business to, any Person; or (z) where such payment would constitute a bribe, kickback or illegal or improper payment to assist any of the Company Group in obtaining or retaining business for, or with, or directing business to, any Person. The Company Group has not accepted or received any unlawful contributions, payments, gifts or expenditures.

**Section 4.28 Solvency, Etc.**

The Company Group is not insolvent and, immediately after giving effect to the transactions contemplated hereby, the Company Group will not be insolvent. The Company Group has assets, and immediately after giving effect to the transactions contemplated hereby, will have assets, (both tangible and intangible) with a fair saleable value in excess of the amount required to pay its Liabilities as they come due. The Company Group has adequate capital for the conduct of its business and discharge of its debts. The Company Group is not involved in any Proceeding by or against it as a debtor before any Governmental Entity under Title 11 of the United States Bankruptcy Code or any other insolvency or debtors' relief act, whether state, federal or foreign, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official for any part of the Company Group's property.

**Section 4.29 Protection of Customer Information.**

The Company Group has implemented and maintained commercially reasonable information security measures consistent with industry standards to protect against unauthorized access to, and misuse or loss of, Customer Information or any media containing Customer Information. The Company Group has never experienced any such access, misuse, or loss that could compromise (or threatened to compromise) the security, confidentiality or integrity of such Customer Information.

**Section 4.30 Unregistered Securities.**

The Company represents and warrants that each Company Stockholder who receives Per Share Equity Consideration has represented to the Company (*provided, however*, that the representations and warranties given in Section 4.30(b)-(e) will not be true as of the date of this Agreement, but will be true as of the Effective Date) as follows:

(a) Except as set forth on Schedule 4.30(a), such Company Stockholder is an "accredited investor" within the meaning of Rule 501 under the 1933 Act and is able to bear the risk of holding the Per Share Equity Consideration, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the acquisition of the Per Share Equity Consideration.

(b) Such Company Stockholder has been furnished with materials relating to the business, finances and operations of Buyer (and the Per Share Equity Consideration) that has been requested by such Company Stockholder. Such Company Stockholder has been afforded the opportunity to ask questions of Buyer. Neither such inquiries nor any other due diligence investigations conducted at any time by such Company Stockholder shall modify, expand, amend or affect such Company Stockholder's right to rely on the Buyer's and Merger Sub's representations and warranties contained in ARTICLE V below. Such Company Stockholder understands that holding the Per Share Equity Consideration involves a high degree of risk. Such Company Stockholder has sought such accounting, legal and tax advice as such Company Stockholder has considered necessary to make an informed investment decision with respect to its acquisition of the Per Share Equity Consideration.

(c) Such Company Stockholder acknowledges and agrees that until such time as the Per Share Equity Consideration has been registered pursuant to the provisions of the 1933 Act, or the Per Share Equity Consideration is eligible for resale pursuant to Rule 144 promulgated under the 1933 Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Per Share Equity Consideration will bear the following restrictive legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM. THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO ABOVE.

(d) Such Company Stockholder will be acquiring the Per Share Equity Consideration for its own account and not with a view to distribution in violation of any securities laws. Such Company Stockholder has been advised and understands that the Per Share Equity Consideration has not been or will not be registered under the 1933 Act or under the “blue sky” laws of any jurisdiction and may be resold only if registered pursuant to the provisions of the 1933 Act (or if eligible, pursuant to the provisions of Rule 144 promulgated under the 1933 Act or pursuant to another available exemption from the registration requirements of the 1933 Act). Such Company Stockholder has been advised and understands that Buyer, in issuing the Per Share Equity Consideration, is relying upon, among other things, the representations and warranties of such Company Stockholder contained in this [Section 4.30](#) in concluding that such issuance is a “private placement” and is exempt from the registration provisions of the 1933 Act.

(e) Such Company Stockholder acknowledges and agrees that it is voluntarily acquiring the Per Share Equity Consideration based on its own judgment and not in reliance upon any verbal or written representations by any of the Buyer or Merger Sub or any of their respective agents regarding the prospective profits of the business associated with Buyer subsequent to the Closing Date. Such Company Stockholder further acknowledges and agrees that it understands that no warranties as to the future performance of the business of Buyer have been or are being made by any of the Buyer or Merger Sub or their respective agents. Such Company Stockholder acknowledges that the efforts of certain Company Stockholders subsequent to the Closing Date, as well as the general competitiveness of the marketplace, will have profound effects on the success of Buyer. Such Company Stockholder acknowledges that the acquisition of the Per Share Equity Consideration involves a risk that future performance may not equal past performance of the business operations, and the Company Stockholder accepts that risk.

#### **Section 4.31 Disclosure**

No representation, warranty or covenant made by the Company in this Agreement, the Schedules or the Exhibits attached to this Agreement, or any of the Company Ancillary Documents and no certificate furnished or to be furnished to Buyer at the Closing or any written information previously provided to Buyer in connection with the transactions contemplated hereby, contains an untrue statement of a material fact or omits to state a material fact required to be stated herein or therein or necessary to make the statements contained herein or therein not misleading.

#### **Section 4.32 Buyer’s Knowledge**

Prior to the execution of this Agreement, the Company has delivered to Buyer true and complete copies of the Material Contracts, documents evidencing any of the Intellectual Property, and all security agreements and other instruments creating or imposing any Lien or other adverse claim on any of the Company’s assets, and any other documents or instruments identified or referred to in this Agreement or the Schedules hereto. Such delivery will not alone constitute adequate disclosure of those facts required to be disclosed on any Schedule to this Agreement, and notice of their contents (other than by express reference on a Schedule) will in no way limit the Company’s other obligations or Buyer’s or Merger Sub’s other rights under this Agreement.

#### **Section 4.33 Disclaimer of Other Representations and Warranties**

Except for the representations and warranties contained in this Agreement (including the related portions of the Company Disclosure Schedules hereto), neither the Company nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Company furnished or made available to Buyer and its representatives.

#### **Section 4.34 UK Employee Matters**

(a) Schedule 4.34(a) contains a true and complete list of all of the employees, workers (including all individuals engaged by a professional employer organization) and independent contractors of the UK Subsidiary as of the date of this Agreement, specifying the position for such employee or independent contractor. The Company has not made any written or oral commitment to any employee, worker or independent contractor with respect to compensation, promotion, retention, termination, severance or similar matters in connection with the transactions contemplated by this Agreement. The Company has carried out right to work checks for all employees and maintains, in all respects, accurate and complete evidence of the right to work for each of its former and current employees and workers in accordance with applicable laws concerning immigration and employment eligibility verification obligations.

(b) Except as set forth in Schedule 4.34(b), there are no incentive schemes or other incentive arrangements (including, without limitation, any share option arrangement, commission, profit sharing or bonus scheme) in which any employee, worker or independent contractor of the UK Subsidiary participates.

(c) The UK Subsidiary has not recognised any trade union, works/staff councils or association of trade unions or other organisation of employees, workers or independent contractors and there is no collective agreement or other agreement or arrangement whether in writing, oral or created by custom and practice, with any trade union, staff association, staff works council or other organisation of employees, workers or independent contractors of the UK subsidiary. The Company has not implemented any collective redundancies that could implicate the Trade Union and Labour Relations (Consolidation) Act 1992, as amended, or any similar state or local Law.

(d) The UK Subsidiary has in relation to each employee, worker and independent contractor of the UK Subsidiary:

(i) to the Company's Knowledge, performed and discharged all material UK legal and contractual obligations and duties it is required to perform;

(ii) complied with any applicable material UK laws affecting contractual and other relations between employers and their employees, workers or independent contractors;

(iii) discharged its current obligations to pay all salaries, wages, fees, commissions, bonuses, overtime pay, holiday pay, sick pay, accrued entitlement under incentive schemes, national minimum wage, income tax and national insurance contributions, pension contributions and insurance premiums and other benefits of or connected with the employment or engagement of the employees, workers or independent contractors of the UK Subsidiary.

(e) To the Company's Knowledge there are no sums owing to or from any employee, worker or independent contractor of the UK Subsidiary other than reimbursement of expenses, wages for the current salary period and holiday pay for the current holiday year owed by the UK Subsidiary to the relevant employee, worker or independent contractor.

(f) The UK Subsidiary is not engaged or involved in any dispute, claim or legal proceedings with any of its current or former employees, workers or independent contractors and, as to the Company's Knowledge, there are no present circumstances which are likely to give rise to any such dispute.

(g) To the Company's Knowledge, there are no enquiries or investigations existing, pending or threatened, into the UK Subsidiary by the Equality and Human Rights Commission or similar authority in any other jurisdiction.

(h) no notice to terminate the contract of employment or engagement of any employee, worker or independent contractor of the UK Subsidiary (whether given by the relevant employer or by the employee, worker or independent contractor) is pending, outstanding or threatened.

(i) Each person who has provided or is providing services to the UK Subsidiary, and has been classified as a consultant, independent contractor or temporary employee, has been properly classified as such under all applicable Laws including relating to wage and hour and Tax. The UK Subsidiary has no liability or obligations under any applicable Laws arising out of treating any such person as a consultant, independent contractor or temporary employee, as applicable, and no such person is entitled to any compensation or benefits that such person has not been afforded under any applicable Laws or benefit plan or program of the UK Subsidiary. The UK Subsidiary is not liable for any payment to any trust or other fund or to any governmental entity with respect to unemployment compensation benefits, social security or other benefits or obligations for UK Subsidiary personnel (other than routine payments to be made in the ordinary course of business and consistent with past practice).

(j) In respect of any insured benefits provided to or for the benefit of UK Subsidiary employees (the "Insured Benefits"):

(i) such benefits are fully insured by an insurance policy with an insurer of good repute;

(ii) to the Company's Knowledge, there are no grounds which may enable the insurance company to avoid or limit its liability, invalidate the insurance or legitimately refuse to renew the insurance either at all or only on special terms or result in the premiums being increased and the insurance company has met in full all claims due for settlement;

(iii) to the Company's Knowledge, there are no claims, complaints, investigations, disputes or legal proceedings about benefits under, or membership of, the Insured Benefits and there are no circumstances which shall or may give rise to such a claim, complaint, investigation, proceeding or dispute; and

(iv) no person who has at any time had the right to join an Insured Benefits scheme has been excluded from doing so.

(k) The UK Pension Scheme and the UK Life Assurance Scheme are the only arrangements under which the UK Subsidiary has, or may have, any obligation (whether legally binding or not) to provide or contribute towards pension, lump sum, ill-health, disability or accident benefits in respect of any current or former worker, employee or officer of the UK Subsidiary or their dependents, including any benefits as set out in Section 150(1) of the Finance Act 2004 and no announcement has been made of an intention or proposal to enter into or establish any such arrangement.

(l) The UK Subsidiary complies and at all times has complied with its obligations under the Pensions Act 2008 and associated regulations in relation to auto-enrolment.

(m) There are no outstanding contributions, premiums, taxes, or expenses relating to the UK Pension Scheme or the UK Life Assurance Scheme or services in respect of the UK Pension Scheme or the UK Life Assurance Scheme which the UK Subsidiary is or could be liable to pay in whole or in part.

(n) No person with whom the UK Subsidiary is connected or associated participates, or has participated, as an employer in a defined benefit occupational pension scheme. No director of the UK Subsidiary is connected or associated with an employer in a defined benefit occupational pension scheme.

(o) No contribution notice or financial support direction under the Pensions Act 2004, notice, fine or other sanction has been issued by the Pensions Regulator to the UK Subsidiary.

(p) Since August 1981, the UK Subsidiary has not entered into any transaction whereby employees or former employees were transferred to the UK Subsidiary under the Transfer of Undertakings (Protection of Employment) Regulations 1981, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended or replaced, or Council Directive 77/187 EEC, who prior to the transfer had rights under an occupational pension scheme that did not solely relate to benefits for old age, invalidity or survivors (within the meaning of regulation 10(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006).

(q) Benefits quantified by reference to a level of pay are not, and have never been provided by, or promised through, the UK Pension Scheme.

(r) With respect to the UK Pension Scheme and the UK Life Assurance Scheme, the Company has made available to Buyer complete and accurate copies of the current governing documentation for these arrangements.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB**

Buyer and Merger Sub hereby jointly and severally represent and warrant to the Company, except as set forth in the disclosure schedule delivered by the Buyer to the Company (the "Buyer Disclosure Schedules"), that the statements contained in this ARTICLE V are correct and complete (i) as of the date of this Agreement and (ii) will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this ARTICLE V, except, in each case, those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

**Section 5.1 Organization**

Each of Buyer and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

### **Section 5.2 Capitalization**

As of the date of this Agreement, there were 49,832,918 shares of Buyer Common Stock issued and outstanding (the “Buyer Stock”) and there were 8,624,991 Buyer Public Warrants issued and outstanding (the “Buyer Warrants” and, together with the Buyer Stock, the “Buyer Listed Securities”). Each issued and outstanding Buyer Listed Security is duly authorized, validly issued, and was issued in compliance with all applicable Laws. Each issued and outstanding share of Buyer Stock is fully paid and nonassessable. There are no declared or accrued but unpaid dividends or other distributions with respect to any Buyer Listed Security. All shares of underlying Buyer Common Stock which may be issued upon the exercise of the rights represented by the Buyer Warrants will, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and will be issued in compliance with all applicable Laws. The authorized capital stock of Merger Sub consists of 100 shares of common stock with a par value of \$0.01 per share, of which 1 share is issued and outstanding. Each issued and outstanding share of Merger Sub Common Stock is duly authorized, validly issued, fully paid and nonassessable, and was issued in compliance with all applicable Laws. There are no declared or accrued but unpaid dividends or other distributions with respect to any shares of capital stock of the Merger Sub Common Stock. Merger Sub has no assets and no liabilities.

### **Section 5.3 Valid Issuance**

The shares of Buyer Common Stock constituting the Per Share Equity Consideration are duly authorized and, upon issuance at the Closing, will be validly issued, fully paid and non-assessable, and the issuance of such shares is not subject to preemptive rights. Such shares are issued and granted in compliance in all material respects with (i) applicable securities Laws and other applicable Laws and (ii) all requirements set forth in applicable Contracts.

### **Section 5.4 Authorization**

(a) Subject to the Buyer Stockholder Approval, each of Buyer and Merger Sub has full corporate power and authority to execute and deliver this Agreement and any other certificate, agreement, document or other instrument to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the “Buyer Ancillary Documents”), to perform its obligations under this Agreement and the Buyer Ancillary Documents and to consummate the transactions contemplated by this Agreement and the Buyer Ancillary Documents. The execution and delivery of this Agreement and the Buyer Ancillary Documents by Buyer and Merger Sub, the performance by Buyer and Merger Sub of their respective obligations under this Agreement and the Buyer Ancillary Documents, and the consummation of the transactions provided for in this Agreement and the Buyer Ancillary Documents, except for the Buyer Stockholder Approval, have been duly and validly authorized by all necessary corporate action on the part of Buyer and Merger Sub. This Agreement has been and, as of the Closing Date, the Buyer Ancillary Documents will be, duly executed and delivered by Buyer and Merger Sub, and do or will, as the case may be, constitute the valid and binding agreements of Buyer and Merger Sub, enforceable against Buyer and Merger Sub in accordance with their respective terms, subject to Buyer Stockholder Approval, applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors’ rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

(b) The affirmative vote of a majority of the outstanding stock of Buyer entitled to vote thereon is required to approve this Agreement (the “Buyer Stockholder Approval”). The Buyer Stockholder Approval is the only vote of any of Buyer’s capital stock necessary in connection with the consummation of the transactions contemplated by this Agreement (including the Closing).



### **Section 5.5 Absence of Restrictions and Conflicts.**

The execution, delivery and performance of this Agreement and the Buyer Ancillary Documents, the consummation of the transactions contemplated by this Agreement and the Buyer Ancillary Documents and the fulfillment of and compliance with the terms and conditions of this Agreement and the Buyer Ancillary Documents do not or will not, as the case may be, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under, or otherwise require any action, approval, order, authorization, registration, declaration or filing with respect to (a) any term or provision of the charter documents of Buyer or Merger Sub, (b) any Contract, Permit or other instrument applicable to the Buyer or Merger Sub or their businesses, (c) any Order of any Governmental Entity to which Buyer or Merger Sub is a party or by which Buyer or Merger Sub or any of their respective properties is bound or (d) any Permit, Law or arbitration award of any court or Governmental Entity or agency applicable to Buyer or Merger Sub, that in any case would be reasonably likely to prevent or materially delay the performance by Buyer or Merger Sub of any of their respective obligations under this Agreement or the consummation of any of the transactions contemplated hereby.

### **Section 5.6 Brokers, Finders and Investment Bankers.**

Except as set forth on Schedule 5.6, neither Buyer nor Merger Sub, nor any officers, directors nor employees of Buyer or Merger Sub, nor any Affiliate of Buyer or Merger Sub, has employed any broker, finder or investment banker or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees or finders' fees in connection with the transactions contemplated by this Agreement.

### **Section 5.7 Exempt Offering.**

The shares of Buyer Common Stock issued in connection with the payment of the Per Share Equity Consideration have not been registered under the 1933 Act and are being offered and sold pursuant to an exemption from registration contained in the Securities Act.

### **Section 5.8 SEC Documents.**

Buyer has timely filed or furnished with the Securities and Exchange Commission (the "Commission") all reports, schedules, forms, statements, and other documents (including exhibits and other information incorporated therein) required to be filed or furnished by it since its inception, under the Securities Act or the Exchange Act (all such documents, collectively, the "SEC Documents"). The SEC Documents, including any audited or unaudited financial statements and any notes thereto or schedules included therein (the "Buyer Financial Statements"), at the time filed or furnished (except to the extent corrected by a subsequently filed or furnished SEC Document filed or furnished prior to the Closing Date) (i) did 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 (in the light of the circumstances under which they were made) not misleading, (ii) complied in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as applicable, (iii) in the case of the Buyer Financial Statements, complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto, (iv) in the case of the Buyer Financial Statements, were prepared consistent with historical practices applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or the omission of notes to the extent permitted by Regulation S-K or, in the case of unaudited statements, as permitted by the Commission) and subject, in the case of interim financial statements, to normal year-end adjustments, and (v) in the case of the Buyer Financial Statements, fairly present in all material respects the consolidated financial condition, results of operations, and cash flows of Buyer as of the dates and for the periods indicated therein.

**Section 5.9 Exchange Listing.**

The Buyer Common Stock is listed on the NASDAQ Composite (the “NASDAQ”), and Buyer has not received any notice of delisting from the NASDAQ. No judgment, order, ruling, decree, injunction, or award of any securities commission or similar securities regulatory authority or any other Governmental Body, or of the NASDAQ, preventing or suspending trading in any securities of Buyer has been issued, and no proceedings for such purpose are, to Buyer’s Knowledge, pending, contemplated or threatened. Buyer has taken no action that is designed to terminate the registration of the Buyer Common Stock under the Exchange Act.

**Section 5.10 Solvency, Etc.**

As of the Closing Date, neither Buyer nor Merger Sub will be insolvent and, immediately after giving effect to the transactions contemplated hereby, neither Buyer nor Merger Sub will be insolvent.

**Section 5.11 Due Diligence.**

Buyer and Merger Sub acknowledge and agree that they have conducted their own independent investigation, review and analysis of the Company and its business, results of operations, prospects, condition (financial or otherwise) and assets and acknowledge that Buyer representatives have been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company for such purpose. Buyer and Merger Sub further acknowledge and agree that: (a) in determining to enter into this Agreement and to consummate the transactions contemplated hereby, they have relied solely upon their own investigation and the express representations and warranties of the Company set forth in ARTICLE IV of this Agreement; and (b) the Company has not made any representation or warranty as to the Company, its business or assets, or this Agreement, except as expressly set forth in ARTICLE IV of this Agreement and the associated disclosure statements.

**Section 5.12 Disclosure.**

No representation, warranty or covenant made by the Buyer or Merger Sub in this Agreement or the Exhibits attached to this Agreement, or any of the Buyer Ancillary Documents and no certificate furnished or to be furnished to the Company at the Closing or any written information previously provided to the Company in connection with the transactions contemplated hereby, contains an untrue statement of a material fact or omits to state a material fact required to be stated herein or therein or necessary to make the statements contained herein or therein not misleading.

**ARTICLE VI  
CERTAIN COVENANTS AND AGREEMENTS**

**Section 6.1 Conduct of Business by the Company.**

(a) From the date hereof until the Closing Date or the earlier termination of this Agreement pursuant to Section 8.1 (the “Transition Period”), the Company Group shall, except as required in connection with the transactions contemplated by this Agreement and except as otherwise consented to in writing by Buyer, which consent shall not be unreasonably delayed, conditioned or withheld, conduct the business of the Company Group in the ordinary course on a basis consistent with past practice and, except those in the ordinary course of business and not otherwise prohibited under this Section 6.1, not enter into any Contract, transaction or activity or make any commitment. By way of illustration and not in limitation of the foregoing, the Company Group agrees that it shall:

(i) preserve the relationships and goodwill of the Company Group;

(ii) maintain its existence and good standing in its jurisdiction of organization and in each jurisdiction in which the ownership or leasing of its assets or the conduct of its business requires such qualification;

(iii) duly and timely file or cause to be filed all reports and returns required to be filed by it with any Governmental Entity and promptly pay or cause to be paid when due all Taxes, assessments and governmental charges, including interest and penalties levied or assessed, unless diligently contested in good faith by appropriate proceedings;

(iv) maintain in good condition and repair (ordinary wear and tear excepted), consistent with past practices, its assets and all equipment, fixtures and other tangible personal property located on the Leased Real Property;

(v) manage the working capital of the business of the Company Group, including cash, receivables, or other current assets, trade payables and other current Liabilities, in a fashion consistent with past practice, including by selling inventory and other property in an orderly and prudent manner and by paying outstanding obligations, trade accounts and other indebtedness as they come due;

(vi) continue to extend customers credit, collect accounts receivable and pay accounts payable and similar obligations in the ordinary course of business consistent with past practice;

(vii) perform in all material respects all of the Company Group's obligations under, and not default or suffer to exist any event or condition that with notice or lapse of time or both would constitute a default under, each Material Contract (except those being contested in good faith) and not enter into, assume or amend any Material Contract;

(viii) maintain in full force and effect and in the same amounts policies of insurance comparable in amount and scope of coverage to that now maintained by or on behalf of the Company Group;

(ix) continue to maintain the Company Group's books and records in accordance with the historical practices of the Company; and

(x) continue the Company Group's cash management practices in the ordinary course of business consistent with past practice.

(b) Without limitation of the provisions set forth in Section 6.1(a), except as otherwise consented to in writing by Buyer, which consent shall not be unreasonably delayed, conditioned or withheld, during the Transition Period, the Company Group shall not:

(i) dispose of, permit to lapse any rights to use or disclose to any Person any Company Intellectual Property not heretofore a matter of public knowledge;

(ii) amend or modify its charter documents;

(iii) create any subsidiary or acquire any equity interest of any business or entity;

(iv) (A) sell any of its assets, other than in the ordinary course of business consistent with past practice; (B) sell or factor any accounts receivable, with or without recourse, except as permitted under the terms of that certain Purchase and Sale Agreement dated May 26, 2021, by and between the Company and Catalyst Finance, L.P., (C) create, incur or assume any Company Debt outside the ordinary course of business; (D) grant, create, incur or suffer to exist any Liens which did not exist on the date hereof; (E) incur any Liability except in the ordinary course of business consistent with past practice; (F) write off any guaranteed checks, notes or accounts receivable except in the ordinary course of business consistent with past practice; (G) write down the value of any asset on the books or records of the Company Group, except for depreciation and amortization in the ordinary course of business and consistent with past practice; (H) cancel any debt or waive any claims or rights; (I) make any commitment for any capital expenditure to be made on or after the Closing Date outside of the ordinary course of the business consistent with past practice and in excess of \$50,000, or (J) enter into any Material Contract outside of the ordinary course of the business consistent with past practice requiring the expenditure of more than \$100,000 in any one (1) calendar year by the Company;

(v) increase in any manner the compensation of, or enter into any new bonus or incentive agreement or arrangement with, any of its executive and management employees (for the avoidance of doubt, the Company can conduct annual reviews of non-executive or non-management employees, which may include increases to compensation not to exceed 4% above the prior year);

(vi) except for the merger of the 3D At Depth, Inc. 401(k) Plan with and into the ITHR 401(k) Plan, sponsored by InTandem Human Resources LLC, (A) adopt, amend or terminate any Company Benefit Plan, the UK Pension Scheme or the UK Life Assurance Scheme, (B) increase the benefits provided under any Company Benefit Plan, the UK Pension Scheme or the UK Life Assurance Scheme, or (C) promise or commit to undertake any of the foregoing in the future;

(vii) pay, discharge or satisfy any Liability, other than the payment, discharge or satisfaction in the ordinary course of business consistent with past practice of Liabilities reflected or reserved against in the Latest Balance Sheet or incurred in the ordinary course of business since the date thereof consistent with past practice;

(viii) increase any reserves for contingent Liabilities (excluding any adjustment to bad debt reserves in the ordinary course of business consistent with past practice); or

(ix) authorize, or commit or agree to take, any of the foregoing actions.

In connection with the continued operation of the Company Group's business during the Transition Period, the Company Group will confer in good faith on a regular and frequent basis with one (1) or more representatives of Buyer designated to the Company Group regarding operational matters and the general status of ongoing operations promptly and will notify Buyer of any event or occurrence that has had or may reasonably be expected to have a Material Adverse Effect on the Company Group, its results of operations, business or prospects. The Company Group acknowledges that Buyer does not and will not waive any rights it may have under this Agreement as a result of such consultations. The Company Group shall not take any action that would, or that could reasonably be expected to, result in any of the representations and warranties of the Company Group set forth in this Agreement becoming untrue.

**Section 6.2 Inspection and Access to Information.**

During the Transition Period, the Company Group shall (i) provide Buyer and its designees, officers, counsel, accountants, actuaries, financing sources and other authorized representatives (collectively, the “Representatives”) with such information as Buyer may from time to time reasonably request; (ii) provide Buyer and its Representatives access during regular business hours and upon reasonable notice to the books, records, offices, personnel, counsel, accountants and actuaries of the Company Group as Buyer or its Representatives may from time to time reasonably request; and (iii) permit Buyer and its Representatives to make such inspections thereof as Buyer may reasonably request. No such investigation (or any disclosure made at any time by the Company to Buyer) shall limit or modify in any way, or act or result in a waiver of, the Company’s obligations with respect to any breach of the representations, warranties, covenants or agreements of the Company contained herein (including, without limitation, conditions to Closing or indemnification obligations).

**Section 6.3 Notices of Certain Events.**

The Company shall promptly notify Buyer in writing, and the Buyer shall promptly notify the Company in writing of:

- (a) any changes or events which, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect;
- (b) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
- (c) any notice or other communication from any Governmental Entity in connection with the transactions contemplated by this Agreement;
- (d) any actions, suits, claims, investigations or Proceedings commenced or, to its Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.11 or that relate to the consummation of the transactions contemplated by this Agreement;
- (e) the damage or destruction by fire or other casualty of any of the other party’s assets or part thereof or in the event that any of such party’s assets or part thereof becomes the subject of any Proceeding or, to the Knowledge of the Company or the Buyer, as applicable, threatened Proceeding for the taking thereof or any part thereof or of any right relating thereto by condemnation, eminent domain or other similar governmental action; and
- (f) (i) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of the Company or the Buyer, as applicable, contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date or that will or may result in the failure to satisfy any of the conditions specified in ARTICLE VII of this Agreement and (ii) any failure of the Company or the Buyer, as applicable, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

No such notice shall limit or modify in any way, or act or result in a waiver of, the Company’s or the Buyer’s, as applicable, obligations with respect to any breach of any of the representations, warranties, covenants or agreements contained herein (including, without limitation, conditions to Closing).

#### **Section 6.4 No Solicitation of Transactions.**

During the Transition Period, neither the Company nor any of its Affiliates will, directly or indirectly, through any officer, director or agent of any of them or otherwise, initiate, solicit or encourage (including by way of furnishing non-public information or assistance), or enter into negotiations of any type, directly or indirectly, or enter into a confidentiality agreement, letter of intent or purchase agreement, merger agreement or other similar Contract with any Person other than Buyer and Merger Sub with respect to a sale of all or any portion of the assets of the Company, or a merger, consolidation, business combination, sale of all or any portion of the equity interests of the Company, or the liquidation or similar extraordinary transaction with respect to the Company that may prevent or materially delay the performance by the Company of any of its obligations under this Agreement or the consummation of the transactions contemplated hereby. The Company will notify Buyer orally (within one (1) Business Day) and in writing (as promptly as practicable) of all relevant terms of any proposals by a third party to do any of the foregoing which the Company or any of its Affiliates or any of their respective officers, directors, partners, employees, investment bankers, financial advisors, attorneys, accountants or other representatives may receive relating to any of such matters, and, if such proposal is in writing, the Company will deliver to Buyer a copy of such inquiry or proposal.

#### **Section 6.5 Reasonable Efforts; Further Assurances; Cooperation.**

Subject to the other provisions of this Agreement, the parties will each use their reasonable, good faith efforts to perform their obligations in this Agreement and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to obtain all consents required (including, without limitation, those described on Schedule 4.13(b)) and all regulatory approvals and to satisfy all conditions to their respective obligations under this Agreement and to cause the transactions contemplated in this Agreement to be effected on or prior to the Outside Date in accordance with the terms of this Agreement and will cooperate fully with each other and their respective officers, directors, employees, agents, counsel, accountants and other representatives or designees in connection with any steps required to be taken as a part of their respective obligations under this Agreement, including, without limitation:

(a) Each of the parties promptly will make their respective filings and submissions and will take all actions necessary, proper or advisable under applicable Laws and regulations to obtain any required approval of any Governmental Entity with jurisdiction over the transactions contemplated by this Agreement (except that neither Buyer nor Merger Sub shall have any obligation to take or consent to the taking of any action required by any such Governmental Entity that could adversely affect the Company or the transactions contemplated by this Agreement or the Buyer Ancillary Documents). Each of the parties will furnish all information required for any application or other filing to be made pursuant to the rules and regulations of any applicable Law in connection with the transactions contemplated by this Agreement.

(b) In the event any Proceeding by any Governmental Entity or other Person is commenced which questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the parties agree to cooperate and use all reasonable efforts to defend against such Proceeding and, if an injunction or other order is issued in any such Proceeding, to use all reasonable efforts to have such injunction or other order lifted and to cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated by this Agreement.

(c) The Company will give any notices to third parties and use commercially reasonable efforts (in consultation with Buyer) to obtain any third-party consents (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement, (ii) disclosed or required to be disclosed in the Schedules to this Agreement, including, without limitation, the consents described in Schedule 4.13(b), (iii) required to avoid a breach of or default under any Material Contracts in connection with the consummation of the transactions contemplated by this Agreement or (iv) required to prevent a Material Adverse Effect, whether prior to or after the Closing Date, including, without limitation, those set forth in Schedule 6.1.

### **Section 6.6 Interim Financials.**

As promptly as practicable after each regular accounting period subsequent to the Latest Balance Sheet Date and prior to the Closing Date, the Company will deliver to Buyer periodic financial reports in the form which it customarily prepares for its internal purposes and, if available, unaudited statements of the financial position of the Company as of the last day of each accounting period and statements of income and changes in financial position of the Company for the period then ended. The Company covenants that such interim statements (i) will present fairly the financial condition of the Company as of their respective dates and the related results of its operations for the respective periods then ended, and (ii) will be prepared in accordance with the historical practices of the Company applied on a basis consistent with the Interim Financial Statements.

### **Section 6.7 Public Announcements.**

None of Buyer, the Company or any of their respective Affiliates shall make any public announcement or issue any public communication regarding this Agreement or the transactions contemplated hereby, or any matter related to the foregoing, without first obtaining the prior consent of the Company or Buyer, as applicable (which consent shall not be unreasonably withheld, conditioned or delayed), except if such announcement or other communication is required by applicable Law or legal process (including pursuant to the Securities Act or the rules of any national securities exchange), in which case Buyer or the Company, as applicable, shall use their commercially reasonable efforts to coordinate such announcement or communication with the other party, prior to announcement or issuance and allow the other party a reasonable opportunity to comment thereon (which shall be considered by Buyer or the Company, as applicable, in good faith); provided, however, that, notwithstanding anything contained in this Agreement to the contrary, each party and its Affiliates may make announcements and may provide information regarding this Agreement and the transactions contemplated hereby to its and their Affiliates, and its and their respective investors, directors, officers, employees, managers and advisors without the consent of any other party hereto; and provided further that, subject to this Section 6.7, the foregoing shall not prohibit any party hereto from communicating with third parties to the extent necessary for the purpose of seeking any third-party consent.

### **Section 6.8 Confidentiality.**

At Closing, Buyer's obligations under the Confidentiality Agreement shall terminate.

### **Section 6.9 Intended Tax Treatment.**

(a) The Parties acknowledge and agree that the transactions pursuant to this Agreement are intended to be treated for U.S. federal income Tax purposes (and any applicable U.S. state or local income Tax purposes that follow the U.S. federal income Tax treatment) in the manner set forth in this Section 6.9(a) (the "Intended Tax Treatment"), and each of the Parties agrees to, and will cause their respective Affiliates to, use commercially reasonable efforts to cause the transactions pursuant to this Agreement to qualify for the Intended Tax Treatment.

(i) Each of the Parties intend that the Merger shall constitute a transaction that qualifies as a "reorganization" within the meaning of Section 368(a)(2)(E) of the Code.

(ii) The Buyer and the Company hereby adopt, and will cause any Affiliates to adopt, as necessary, this Agreement as a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

**Section 6.10 Transfer Taxes.** Notwithstanding anything to the contrary in this Agreement, all U.S. federal, state, local, non-U.S. or other excise, sales, use, value-added, transfer (including real property transfer), stamp, documentary, excise, registration, filing, recordation and other such Taxes and fees incurred in connection with this Agreement, together with any interest, additions or penalties with respect thereto, ("Transfer Taxes") shall be paid by the Buyer when due, and the Buyer will cause the Company to file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, the Buyer shall join in the execution of any such Tax Returns and other documentation.

**Section 6.11 Tax Covenants.**

(a) Each Party shall, and shall cause its Affiliates to, cooperate fully, as and to the extent reasonably requested by another Party, in connection with the filing of relevant Tax Returns, the Tax treatment of any aspect of the transactions or any audit pertaining to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision (with the right to make copies) of records and information reasonably relevant to any Tax proceeding or audit, making employees reasonably available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder (to the extent such information or explanation is not publicly or otherwise reasonably available).

(b) Buyer acknowledges that certain holders of Company Common Stock may take the position for U.S. federal income tax purposes that the Per Share Equity Consideration qualifies for the tax treatment described in Section 1202 of the Code. Each of the Buyer and the Company will comply with its respective obligations, if any, arising under Treasury Regulations promulgated after the Closing Date pursuant to Section 1202.

**Section 6.12 Assistance with Issuance.**

The Company shall provide, and shall cause its officers and employees to provide, all cooperation reasonably requested by Buyer in connection with the arrangement and consummation of, and the negotiation of agreements with respect to, the share issuance necessary to consummate the transactions contemplated hereby. In furtherance and not in limitation of the foregoing, the Company shall, and shall cause its officers, directors, managers and employees to (i) cause the senior officers of the Company to be reasonably available during normal business hours, on reasonable advance notice, to Buyer and other relevant parties to participate in due diligence sessions and to participate in presentations (including any lender meetings or similar presentations) related to such issuance, and (ii) reasonably assist in the preparation of customary documents and assist Buyer in preparing other appropriate and customary materials, in each case to be used in connection with such issuance.

**Section 6.13 Updated Disclosure Schedules.**

(a) From and after the date of this Agreement until the Closing Date, the Company shall prepare and deliver to Buyer supplements and/or amendments to the Company Disclosure Schedules (which may contain additional Schedules that are not in existence as of the date hereof relating to any of the provisions contained in ARTICLE IV in each case, such supplement, amendment or new Schedule shall only relate to items that would cause the conditions under Section 7.2(a) and Section 7.2(c) to be untrue and shall be referred to as a "Company Update") with respect to matters first arising after the date hereof; provided that, in the event that the disclosure of the facts, circumstances and events included in such Company Update would give Buyer the right to elect to terminate this Agreement pursuant to Section 8.1(b) if the thirty (30) day cure period described therein had lapsed and Buyer does not make such election within fifteen (15) Business Days of its receipt of such Company Update, Buyer shall no longer be able to terminate this Agreement as a result of such Company Update.



(b) From and after the date of this Agreement until the Closing Date, the Buyer shall prepare and deliver to Company supplements and/or amendments to the Buyer Disclosure Schedules (which may contain additional Schedules that are not in existence as of the date hereof relating to any of the provisions contained in ARTICLE V in each case, such supplement, amendment or new Schedule shall only relate to items that would cause the conditions under Section 7.3(a) and Section 7.3(c) to be untrue and shall be referred to as a “Buyer Update”) with respect to matters first arising after the date hereof; provided that, in the event that the disclosure of the facts, circumstances and events included in such Buyer Update would give Company the right to elect to terminate this Agreement pursuant to Section 8.1(c) if the thirty (30) day cure period described therein had lapsed and Company does not make such election within fifteen (15) Business Days of its receipt of such Buyer Update, Company shall no longer be able to terminate this Agreement as a result of such Buyer Update.

## ARTICLE VII CONDITIONS TO CLOSING

### **Section 7.1 Conditions to Each Party’s Obligations.**

The respective obligations of each party to effect the transactions contemplated hereby are subject to the satisfaction prior to the Closing Date of the conditions set forth below, unless waived (to the extent such conditions can be waived) by Buyer or the Company, as applicable.

(a) Approvals. All authorizations, consents, Orders or approvals of, or declarations or filings with, or expiration of waiting periods, imposed by, any Governmental Entity necessary for the consummation of the transactions contemplated by this Agreement and the Related Documents shall have been obtained or made.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other Order issued by any Governmental Entity nor other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement and the Related Documents shall be in effect.

(c) Statutes. No action shall have been taken or threatened, and no Law or Order shall have been enacted, promulgated or issued or deemed applicable to the transactions contemplated by this Agreement and the Related Documents by any Governmental Entity that would (i) make the consummation of the transactions contemplated hereby or thereby illegal or substantially delay the consummation of any material aspect of the transactions contemplated hereby or thereby, (ii) compel the Company or Buyer or any of their Affiliates to dispose or hold separate all or a material portion of the business or assets of the Company or Buyer or any Affiliate thereof as a result of the consummation of the transactions contemplated hereby or thereby or (iii) render any party unable to consummate the transactions contemplated hereby or thereby.

### **Section 7.2 Conditions to Obligations of Buyer and Merger Sub.**

The obligations of Buyer and Merger Sub to consummate the transactions contemplated by this Agreement will be subject to the fulfillment at or prior to the Closing of each of the following additional conditions, unless waived (to the extent such conditions can be waived, by Buyer):

(a) Accuracy of Representations and Warranties. All representations and warranties made by the Company in this Agreement and in the Related Documents shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as though made at such time (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations and covenants required to be performed by it under this Agreement and the Related Documents as of the Closing Date.

(c) No Material Adverse Effect. Since the Latest Balance Sheet Date, there shall not have occurred (nor shall Buyer have become aware of), and no effect or circumstance shall exist which could be expected to have, a Material Adverse Effect solely with respect to the Company Group.

(d) Company Certificate. The Chief Executive Officer of the Company shall have executed and delivered to Buyer a certificate as to compliance with the conditions set forth in Sections 7.2(a), (b) and (c).

(e) Consents and Approvals. Buyer shall have received duly executed copies of all consents and approvals (including, without limitations, those consents and approvals set forth on Schedule 7.2(e), and the Company Requisite Approval), in form and substance satisfactory to Buyer and its counsel, that are (i) required for consummation of the transactions contemplated by this Agreement and the Related Documents or (ii) required in order to prevent a breach of, or a default under, or a termination of, any Material Contract.

(f) Buyer Board Approval. Buyer's Board of Directors shall have approved this Agreement and the consummation of the transactions contemplated by this Agreement.

(g) Buyer Stockholder Approval. The Buyer Stockholder Approval shall have been obtained.

(h) Ancillary Documents. The Company shall have delivered, or caused to be delivered, to Buyer the following:

(i) written resignations of the directors and officers of the Company and the UK Subsidiary set forth on Schedule 7.2(h)(i);

(ii) evidence of the termination of the Contracts set forth on Schedule 7.2(h)(ii);

(iii) a certificate, dated as of the Closing Date, signed by the Secretary of the Company, certifying as to (i) the Company's certificate of incorporation and bylaws and the incumbency of its officers executing this Agreement and each Company Ancillary Document to which it is a party and (ii) the resolutions of the board of directors of the Company authorizing the execution, delivery and performance by the Company of this Agreement and each Company Ancillary Document to which it is a party;

(iv) copies of all filings and/or notices made by the Company with Governmental Entities in connection with the consummation of the transactions contemplated by this Agreement and the Company Ancillary Documents, if any;

(v) an executed IRS Form W-9 from the Company;

(vi) a duly executed certificate and notice in compliance with Treasury Regulation Section 1.1445-2(c) and 1.897-2(h), certifying that the Company is not, and has not been at any time during the five (5)-year period ending on the Closing Date, a U.S. real property holding corporation within the meaning of Section 897(c)(2) of the Code and the Treasury Regulations thereunder;

(vii) Offer letters and restrictive covenant agreements for each of Carl Embry and Euan Tait, each in a form reasonably satisfactory to the Buyer and each of Carl Embry and Euan Tait, respectively, and each duly executed by Carl Embry and Euan Tait;

(viii) each Company Stockholder listed on Exhibit E shall have delivered a duly executed copy of the Small Stockholder Lock-Up Agreement to Buyer (except as otherwise agreed to in writing by the Buyer and the Company); and

(ix) all other documents required to be entered into by the Company pursuant to this Agreement or reasonably requested by Buyer to otherwise consummate the transactions contemplated by this Agreement.

(i) Appraisal Rights. The aggregate number of shares of Company Common Stock immediately prior to the Effective Time, the holders of which have demanded and perfected their demands for appraisal of their shares from the Company in accordance with the provisions of Section 262 of the DGCL, shall not exceed 1% of the fully diluted outstanding shares of Company Common Stock.

(j) No Prohibition. There shall not have been enacted or promulgated any Proceedings, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

(k) Share Registration Exemption. Buyer shall be reasonably satisfied that no more than thirty-five (35) of the potential recipients of Buyer Common Stock or rights to acquire Buyer Common Stock in connection with the Merger will fail to be, at the Closing, “accredited” as defined in Rule 501 promulgated under Regulation D of the Securities Act and the issuance of all shares of Buyer Common Stock in the Merger shall validly qualify for an exemption from the registration and prospectus delivery requirements of the Securities Act and the equivalent state “blue-sky” Laws.

(l) SAAB Amendment. The Company shall have entered into an amendment to the OSS Lease Purchase and License Agreement in form and substance satisfactory to the Buyer in its sole discretion.

### **Section 7.3 Conditions to Obligations of the Company.**

The obligations of the Company to consummate the transactions contemplated by this Agreement will be subject to the fulfillment at or prior to the Closing of each of the following additional conditions, unless waived (to the extent such conditions can be waived, by the Company):

(a) Accuracy of Representations and Warranties. All representations and warranties made by Buyer and Merger Sub in this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as though made at such time (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Performance of Obligations by Buyer and Merger Sub. Buyer and Merger Sub shall have performed in all material respects all obligations and covenants required to be performed by them under this Agreement and the Buyer Ancillary Agreements as of the Closing Date.

(c) No Material Adverse Effect. Since the Latest Balance Sheet Date, there shall not have occurred (nor shall Buyer have become aware of), and no effect or circumstance shall exist which could be expected to have a Material Adverse Effect solely with respect to the Buyer.

(d) Company Requisite Approval. The Company Stockholders shall have approved the Company's consummation of the Merger pursuant to a Company Requisite Approval.

(e) Filing of S-4. Buyer shall have filed a Form S-4 Registration Statement with the Securities Exchange Commission, which shall have been declared effective.

(f) Ancillary Documents. Buyer shall have delivered, or caused to be delivered, to the Company the following:

(i) Offer letters and restrictive covenant agreements for each of Carl Embry and Euan Tait, each in a form reasonably satisfactory to the Buyer and each of Carl Embry and Euan Tait, respectively, and each duly executed by Buyer;

(ii) a certificate, dated as of the Closing Date, signed by the Secretary of Buyer, certifying as to (i) Buyer's certificate of incorporation and by-laws and the incumbency of its officers executing this Agreement and each Buyer Ancillary Document to which it is a party and (ii) the resolutions of the board of directors of Buyer authorizing the execution, delivery and performance by Buyer of this Agreement and each Buyer Ancillary Document to which it is a party;

(iii) a certificate, dated as of the Closing Date, signed by the Secretary of Merger Sub, certifying as to (i) Merger Sub's certificate of incorporation and by-laws and the incumbency of its officers executing this Agreement and each Buyer Ancillary Document to which it is a party and (ii) the resolutions of the board of directors of Merger Sub authorizing the execution, delivery and performance by Merger Sub of this Agreement and each Buyer Ancillary Document to which it is a party;

(iv) a certificate from an officer of the Buyer setting forth facts necessary to support the Intended Tax Treatment; and

(v) all other documents required to be entered into or delivered by Buyer and Merger Sub at or prior to the Closing pursuant to this Agreement or the Buyer Ancillary Documents.

## ARTICLE VIII TERMINATION

### **Section 8.1 Termination.**

This Agreement may be terminated at any time at or prior to the Closing Date by:

(a) the mutual consent of Buyer and the Company; or

(b) Buyer, if (i) there has been a breach by the Company of any representation, warranty, covenant or agreement on the part of the Company contained in this Agreement (or any breach of the Company Stockholder Support Agreement on the part of the applicable Company Stockholder that is a party to the Company Stockholder Support Agreement); provided, that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by Buyer to the Company; provided further, however, that a termination by Buyer pursuant to this Section 8.1(b) shall not relieve the Company of Liability for such breaches or otherwise; or (ii) the conditions set forth in Sections 7.1 or 7.2 shall not have been satisfied or waived (to the extent they may be waived) within one-hundred eighty (180) days of the date of this Agreement (the "Outside Date"); or

(c) the Company, if (i) there has been a breach by Buyer or Merger Sub of any representation, warranty, covenant or agreement on its part contained in this Agreement; provided that such breach is not capable of being cured or has not been cured within thirty (30) days after the giving of notice thereof by the Company to Buyer; provided further, however, that a termination by the Company pursuant to this Section 8.1(c) shall not relieve Buyer or Merger Sub of liability for such breaches or otherwise; or (ii) the conditions set forth in Sections 7.1 or 7.3 shall not have been satisfied or waived (to the extent they may be waived) by the Outside Date; or

(d) by written notice from either the Company or Buyer to the other if the Buyer Stockholder Approval is not obtained by proxy or at a stockholder meeting specified for the purpose (subject to any adjournment or recess of the meeting); or

(e) Buyer or the Company, if any permanent injunction or other Order of a Governmental Entity preventing the Closing shall have become final and non-appealable.

Notwithstanding anything to the contrary contained herein, neither Buyer nor the Company shall be entitled to terminate this Agreement pursuant to Sections 8.1(b)(ii) or 8.1(c)(ii), as applicable, if a breach of this Agreement by Buyer or Merger Sub on the one hand, or the Company, on the other hand, has prevented the satisfaction of a condition to the Closing.

#### **Section 8.2 Termination Procedures.**

Any termination pursuant to Section 8.1(a) shall be effected by a written instrument signed by Buyer and the Company, and any other termination pursuant to Section 8.1 shall be effected by written notice from the party so terminating to the other parties hereto, which notice shall specify the Section of this Agreement pursuant to which this Agreement is being terminated.

#### **Section 8.3 Effect of Termination.**

Each party's right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the parties under this Agreement will terminate; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by another party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of another party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

### **ARTICLE IX**

#### **PRE-CLOSING TAX INDEMNITY; REPRESENTATIONS AND WARRANTIES INSURANCE POLICY; REMEDIES**

#### **Section 9.1 Pre-Closing Tax Indemnity.**

(a) Subject to the other terms and conditions of this ARTICLE IX, Company shall indemnify and defend Buyer against, and shall hold Buyer harmless from and against, and shall pay and reimburse Buyer for, any and all Losses incurred or sustained by, or imposed upon, the Buyer based upon, arising out of, with respect to or by reason of Company Taxes that are attributable to any Pre-Closing Tax Period including that portion of any Straddle Period ending on the Closing Date.

(b) For purposes of determining whether Taxes are attributable to a Pre-Closing Tax Period (or the portion of any Straddle Period ending on or prior to the Closing Date) for the purposes of Section 9.1(a), the Parties agree as follows:

(i) In the case of property Taxes imposed on a periodic basis for a Straddle Period, the amounts that are attributable to the portion of the Straddle Period ending on the Closing Date shall be determined by multiplying the Taxes for the entire Straddle Period by a fraction, the numerator of which is the number of calendar days in the portion of the period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period.

(ii) In the case of Taxes in the form of interest or penalties, all such Taxes shall be treated as attributable to a Pre-Closing Tax Period (or the portion of the Straddle Period ending on the Closing Date) to the extent relating to a Tax for a Pre-Closing Tax Period (or portion of a Straddle Period ending on the Closing Date) whether such items are incurred, accrued, assessed or similarly charged on, before or after the Closing Date.

(iii) In the case of all other Taxes for a Straddle Period (including income Taxes, Texas franchise taxes, employment Taxes, and sales and use Taxes) the amount attributable to the portion of the Straddle Period ending on the Closing Date shall be determined as if the Company or its Subsidiaries, as applicable, filed a separate Tax Return with respect to such Taxes for the portion of the Straddle Period ending as of the end of the day on the Closing Date using a “closing of the books methodology.” For purposes of this clause (iii), any item determined on an annual or periodic basis (including amortization and depreciation deductions and the effects of graduated rates) shall be allocated to the portion of the Straddle Period ending on the Closing Date based on the mechanics set forth in clause (i) for periodic Taxes.

**Section 9.2 RWI Policy.**

(a) Buyer has obtained and bound the RWI Policy, a copy of which is attached hereto as Exhibit A. The Parties acknowledge and agree that the Company has had a chance to review such policy and the costs associated with the issuance of such policy, including the total premium, underwriting costs, brokerage commission, and other fees and expenses of such policy. The Parties agree that the RWI Policy shall contain a waiver of subrogation such that the RWI Policy insurer waives all rights of subrogation against the Company and its Affiliates in connection with any claims brought in connection with this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, the Company Stockholders shall bear the cost of the (i) RWI Underwriting Fee Amount, (ii) RWI Broker Fee Amount, and (iii) 50% of the RWI Premium Amount, which amounts shall be withheld from the calculation of the Equity Value payable to the Company Stockholders and paid by Buyer to the RWI Policy insurer and Buyer’s insurance broker (as applicable to obtain and cause the RWI Policy to become effective). Buyer shall bear the cost of the remaining 50% of the RWI Premium Amount.

(c) Notwithstanding anything to the contrary in this Agreement, no limitations, qualifications or procedures in this Agreement shall be deemed to limit or modify the ability of Buyer to make claims under or recover under the RWI Policy.

**Section 9.3 Sole and Exclusive Remedy.**

Other than for claims based on Fraud, gross negligence or intentional misconduct, or claims for specific performance, the sole and exclusive remedy of Buyer arising out of or resulting from this Agreement and the transactions contemplated hereby shall be in accordance with, and limited solely to, the RWI Policy.

**Section 9.4 Nonsurvival of Representations, Warranties and Covenants.**

Except in the case of Fraud, none of the representations, warranties, covenants, obligations or other agreements of the Company and Buyer in this Agreement or in any certificate, statement or instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, obligations, agreements and other provisions, shall survive the Closing and shall terminate and expire upon the occurrence of the Effective Time (and there shall be no liability after the Closing in respect thereof), except for (a) those covenants and agreements contained herein or in any Company Ancillary Document or Buyer Ancillary Document that by their terms expressly apply in whole or in part after the Closing and then only with respect to any breaches occurring after the Closing and (b) ARTICLE X. Nothing in this Section 9.4 shall be deemed to limit or modify (1) the ability of Buyer to make claims under or recover under the RWI Policy.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

**Section 10.1 Specific Performance and Other Remedies.**

The parties each acknowledge that the rights of each party to consummate the transactions contemplated by this Agreement are special, unique and of extraordinary character and that, in the event that any party violates or fails or refuses to perform any covenant or agreement made by it in this Agreement, the non-breaching party may be without an adequate remedy at Law. The parties agree, therefore, that in the event that any party violates or fails or refuses to perform any covenant or agreement made by such party in this Agreement, the non-breaching party or parties may, subject to the terms of this Agreement and in addition to any remedies at Law for damages or other relief, institute and prosecute an action in any court of competent jurisdiction to enforce specific performance of such covenant or agreement or seek any other equitable relief. The right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, none of the parties would have entered into this Agreement. Each party agrees that it will not oppose the granting of specific performance and other equitable relief on the basis that the other parties have an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity.

**Section 10.2 Notices.**

All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx (or other nationally recognized overnight delivery service) or (iv) when emailed during normal business hours (and otherwise as of the immediately following Business Day), addressed as follows:

To Buyer or Merger Sub:

Nauticus Robotics, Inc.  
17146 Feathercraft Lane, Suite 450  
Webster, TX 77598  
Attn: Legal Department  
Email: legal@nautic.us

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

Winston & Strawn LLP  
800 Capitol Street, Suite 2400  
Houston, TX 77002  
Attn: Michael Blankenship  
Email: mblankenship@winston.com

To the Company prior to the Closing:

3D at Depth, Inc.  
1900 S. Sunset St. Suite 1-D  
Longmont, CO 80501  
Attn: Carl Embry  
Email: carl.embry@3datdepth.com

with a copy to:

Hutchinson Black & Cook LLC  
921 Walnut Street, Suite 200  
Boulder, CO 80302  
Attn: Justin C. Konrad  
Email: justin.konrad@hbcboulder.com

and

BoyarMiller  
2925 Richmond Ave., 14<sup>th</sup> Floor  
Houston, TX 77098  
Attn: Gary W. Miller  
Email: gmiller@boyarmiller.com

or to such other address or addresses as the parties may from time to time designate in writing.

**Section 10.3 Schedules and Exhibits.**

The Schedules and Exhibits to this Agreement are hereby incorporated into this Agreement and are hereby made a part of this Agreement as if set out in full in this Agreement.

**Section 10.4 Assignment; Successors in Interest.**

No assignment or transfer by any party of such party's rights and obligations under this Agreement will be made except with the prior written consent of the other parties to this Agreement. This Agreement will be binding upon and will inure to the benefit of the parties and their successors and permitted assigns, and any reference to a party will also be a reference to a successor or permitted assign.

**Section 10.5 Number; Gender.**

Whenever the context so requires, the singular number will include the plural and the plural will include the singular, and the gender of any pronoun will include the other genders.



**Section 10.6 Captions.**

The titles, captions and table of contents contained in this Agreement are inserted in this Agreement only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement. Unless otherwise specified to the contrary, all references to Articles and Sections are references to Articles and Sections of this Agreement and all references to Schedules or Exhibits are references to Schedules and Exhibits, respectively, to this Agreement.

**Section 10.7 Controlling Law; Amendment.**

This Agreement will be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without reference to its choice of law rules. This Agreement may not be amended, modified or supplemented except by written agreement of the parties.

**Section 10.8 Consent to Jurisdiction, Etc.**

Except as otherwise expressly provided in this Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought only to the exclusive jurisdiction of the courts of the State of Delaware or the federal courts located in the State of Delaware, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. The parties agree that, after a legal dispute is before a court as specified in this Section 10.8, and during the pendency of such dispute before such court, all actions, suits, or proceedings with respect to such dispute or any other dispute, including without limitation, any counterclaim, cross-claim or interpleader, shall be subject to the exclusive jurisdiction of such court. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Each party hereto agrees that a final judgment in any action, suit or proceeding described in this Section 10.8 after the expiration of any period permitted for appeal and subject to any stay during appeal shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Laws.

**Section 10.9 WAIVER OF JURY TRIAL.**

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 10.10 Severability.**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Law, the parties waive any provision of Law that renders any such provision prohibited or unenforceable in any respect.

**Section 10.11 Counterparts.**

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one (1) of such counterparts.

**Section 10.12 Enforcement of Certain Rights.**

Nothing expressed or implied in this Agreement is intended, or will be construed, to confer upon or give any Person other than the parties, and their successors or permitted assigns, any rights, remedies or Liabilities under or by reason of this Agreement, or result in such Person being deemed a third-party beneficiary of this Agreement.

**Section 10.13 Waiver.**

Any agreement on the part of a party to any extension or waiver of any provision of this Agreement will be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party of the performance of any covenant, agreement, obligation, condition, representation or warranty will not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by a party of a condition to Closing will not be considered as a waiver of any rights to indemnification that may be claimed by such party with respect to the matters relating to such waived condition. A waiver by any party of the performance of any act will not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

**Section 10.14 Integration.**

This Agreement and the documents executed pursuant to this Agreement supersede all negotiations, agreements and understandings (both written and oral) among the parties with respect to the subject matter of this Agreement.

**Section 10.15 Cooperation Following the Closing.**

Following the Closing, each of the parties shall deliver to the others such further information and documents and shall execute and deliver to the others such further instruments and agreements as the other party shall reasonably request to consummate or confirm the transactions provided for in this Agreement, to accomplish the purpose of this Agreement or to assure to the other party the benefits of this Agreement.

**Section 10.16 Transaction Costs.**

Except as provided above or as otherwise expressly provided herein, (a) Buyer and Merger Sub will pay their own fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement, including the fees, costs and expenses of their financial advisors, accountants and counsel, and (b) the Company will pay its own fees, costs and expenses and those of the Company Stockholders incurred in connection with this Agreement and the transactions contemplated by this Agreement, including the fees, costs and expenses of their financial advisors, accountants and counsel.

**Section 10.17 Interpretation; Construction.**

(a) The term “Agreement” means this agreement together with all Schedules, Annexes and Exhibits hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. Unless the context otherwise requires, words importing the singular shall include the plural, and vice versa. The use in this Agreement of the term “including” means “including, without limitation.” The words “herein,” “hereof,” “hereunder,” “hereby,” “hereto,” “hereinafter,” and other words of similar import refer to this Agreement as a whole, including the Schedules, Annexes and Exhibits, as the same may from time to time be amended, modified, supplemented or restated, and not to any particular article, section, subsection, paragraph, subparagraph or clause contained in this Agreement. All references to articles, sections, subsections, clauses, paragraphs, schedules and exhibits mean such provisions of this Agreement and the Schedules, Annexes and Exhibits attached to this Agreement, except where otherwise stated. The use herein of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require. The use in this Agreement of the terms “furnished,” “provided,” “delivered,” “made available” and similar terms refers, with respect to the provision of information and documents to Buyer, in addition to the physical delivery of such information or documents to Buyer, to such information and/or documents as are made available by the Company or its employees, consultants, advisors or attorneys.

(b) The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. Any fact or item disclosed on any Schedule to this Agreement shall be deemed disclosed on all other Schedules to this Agreement to which such fact or item may reasonably apply so long as such disclosure is in sufficient detail to enable a party hereto to identify the facts or items to which it applies. Any fact or item disclosed on any Schedule hereto shall not by reason only of such inclusion be deemed to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement.

[Remainder of page intentionally left blank]

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

**COMPANY**

**3D AT DEPTH, INC.**

By: /s/ Carl Embry  
Name: Carl Embry  
Title: Chief Executive Officer

**BUYER**

**NAUTICUS ROBOTICS, INC.**

By: /s/ Nicolaus A. Radford  
Name: Nicolaus A. Radford  
Title: Chief Executive Officer

**MERGER SUB**

**3D MERGER SUB, INC.**

By: /s/ Nicolaus A. Radford  
Name: Nicolaus A. Radford  
Title: Chief Executive Officer

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## Exhibit F

### **FORM OF SMALL STOCKHOLDER LOCK-UP AGREEMENT**

THIS SMALL STOCKHOLDER LOCK-UP AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2023, by and between the undersigned (the "Holder") and Nauticus Robotics, Inc., a Delaware corporation ("Nauticus"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Merger Agreement (as defined below).

#### **BACKGROUND**

A. Nauticus, 3D Merger Sub, Inc., a Delaware corporation ("Merger Sub"), and 3D at Depth, Inc., a Delaware corporation (the "Company"), entered into an Agreement and Plan of Merger dated as of October 2, 2023 (the "Merger Agreement").

B. Pursuant to the Merger Agreement, Nauticus will become the 100% stockholder of the Company (the "Transaction").

C. The Holder is the record and/or beneficial owner of equity securities of the Company, which will be exchanged for common stock of Nauticus pursuant to the Merger Agreement.

D. As a condition of, and as a material inducement for the Company to enter into and consummate the transactions contemplated by the Merger Agreement, the Holder has agreed to execute and deliver this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

#### **AGREEMENT**

##### 1. Lock-Up.

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Lock-up Shares (as defined below), enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such Lock-up Shares, whether any of these transactions are to be settled by delivery of any such Lock-up Shares, in cash or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any security of Nauticus.

(b) In furtherance of the foregoing, Nauticus will (i) place an irrevocable stop order on all Lock-up Shares, including those which may be covered by a registration statement, and (ii) notify Nauticus' transfer agent in writing of the stop order and the restrictions on such Lock-up Shares under this Agreement and direct Nauticus' transfer agent not to process any attempts by the Holder to resell or transfer any Lock-up Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(d) For purpose of this Agreement, the "Lock-up Period" means: the earlier of (1) the effective date of a registration statement on which the Lock-Up Shares are included or (2) the period that ends 90 days after the closing date of the Transaction; provided, that, in the event Nauticus completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of Nauticus' stockholders having the right to exchange their shares for common stock, cash, securities or other property, then the Lock-Up Shares shall be released from the restrictions set forth herein to the extent necessary to allow such Holder to participate in such transaction.

The restrictions set forth herein shall not apply to: (1) transfers or distributions to the Holder's current or former general or limited partners, managers or members, stockholders, other equity holders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (2) transfers by bona fide gift to a member of the Holder's immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder's immediate family for estate planning purposes; (3) by virtue of the laws of descent and distribution upon death of the Holder; (4) pursuant to a qualified domestic relations order, in each case where such transferee agrees to be bound by the terms of this Agreement; or (5) transfers or distributions of, or other transactions involving, securities other than the Lock-up Shares (including, without limitation, securities acquired in the Transaction Financing or in open market transactions); provided, no transfer hereunder shall be valid or effective unless such transferee agrees in writing to be bound by the terms of this Agreement as if she were an original party hereto. Further, notwithstanding anything to the contrary herein, at the option of the Holder, these restrictions will not apply and the Lock-Up Shares may be included in any future offerings of Nauticus.

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In addition, the restrictions set forth herein shall not apply to any bona fide third-party tender offer, merger, consolidation, business combination, stock purchase or other similar transaction or series of related transactions after the Closing Date, if such transaction or transactions would result in a Change of Control; provided that in the event that such tender offer, merger, consolidation, business combination, stock purchase or transaction or series of related transactions is not completed, the Lock-up Shares shall remain subject to the restrictions set forth herein. A “Change of Control” means (whether by tender offer, merger, consolidation, asset sale or other similar transaction, whether in one or a series of related transactions): (a) the sale of all or substantially all of the consolidated assets of Nauticus and Nauticus subsidiaries to a third-party Nauticus; (b) a sale resulting in no less than a majority of the voting power of Nauticus being held by person that did not own a majority of the voting power prior to such sale; or (c) a merger, consolidation, recapitalization or reorganization of Nauticus with or into a third-party Nauticus that results in the inability of the pre-transaction equity holders to designate or elect a majority of the Board of Directors (or its equivalent) of the resulting entity or its parent company. In the event that all or a portion of the securities subject to any other lock-up agreement entered into, or otherwise applicable, in connection with the Transaction are released early from the restrictions of such other such other lock-up agreement (whether by release, waiver, amendment, modification, termination or otherwise), the Lock-up Shares subject to this Agreement shall be released on a pro rata basis.

2. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the others and to all third party beneficiaries of this Agreement that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is the binding and enforceable obligation of such party, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party’s obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound.

3. Beneficial Ownership. The Holder hereby represents and warrants that it does not beneficially own, directly or through its nominees (as determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder), any shares of capital stock of Nauticus, or any economic interest in or derivative of such stock, other than those securities specified on the signature page hereto. For purposes of this Agreement, the shares of Nauticus received by the Holder as merger consideration in the Transaction and beneficially owned by the Holder as specified on the signature page hereto are collectively referred to as the “Lock-up Shares.”

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00 PM on a business day, addressee’s day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee’s day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to Nauticus, to:

Nauticus Robotics, Inc.  
17146 Feathercraft Lane, Suite 450  
Webster, TX 77598  
Attention: Legal Department  
Email: legal@nautic.us

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

Winston & Strawn LLP  
800 Capitol Street, Suite 2400  
Houston, TX 77002  
Attention: Michael Blankenship  
Email: mblankenship@winston.com

(b) If to the Holder, to the address set forth on the Holder’s signature page hereto, with a copy, which shall not constitute notice, to:

[●]  
Attention: [●]  
E-mail: [●]

or to such other address as any party may have furnished to the others in writing in accordance herewith.

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6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Closing. Notwithstanding anything to the contrary contained herein, this Agreement and all rights and obligations of the parties hereunder shall be of no force or effect until and unless the Closing occurs pursuant to the Merger Agreement.

8. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

9. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by Nauticus and its successors and assigns.

10. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

11. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

12. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

13. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

14. Governing Law. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Delaware.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provision in the Merger Agreement, the terms of this Agreement shall control.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**Nauticus Robotics, Inc.**

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

\_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**HOLDER**

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

Address:

[•]

**NUMBER OF LOCK-UP SHARES:**

[•]

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## COMPANY STOCKHOLDER SUPPORT AGREEMENT

This COMPANY STOCKHOLDER SUPPORT AGREEMENT (this “*Agreement*”) is made and entered into as of October 2, 2023, by and among Nauticus Robotics, Inc., a Delaware corporation (the “*Buyer*”), and the undersigned stockholders of 3D at Depth, Inc., a Delaware corporation (the “*Company*”) who hold Subject Shares (such stockholders, the “*Company Stockholders*”).

**WHEREAS**, Buyer, 3D Merger Sub, Inc., a Delaware corporation (“*Merger Sub*”), and the Company, are concurrently herewith entering into an Agreement and Plan of Merger (as the same may be amended, restated or supplemented, the “*Merger Agreement*”; capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Merger Agreement) pursuant to which, among other things, Merger Sub will be merged with and into Company, with the Company being the surviving entity and becoming a wholly owned subsidiary of Buyer;

**WHEREAS**, each Company Stockholder is, as of the date of this Agreement, the sole legal owner of the number of (a) outstanding shares of common stock and preferred stock of the Company (“*Company Common Stock*”) and (b) options to purchase shares of Company Common Stock (“*Company Options*”), in each case, set forth opposite such Company Stockholder’s name on *Schedule A* hereto, and such Company Stockholders do not own any other outstanding shares of Company capital stock or other securities convertible into or exercisable or exchangeable for any shares of Company capital stock (such Company securities owned by the Company Stockholders, together with any additional shares of Company Commons Stock or other Company capital stock (including any securities convertible into or exercisable or for Buyer Common Stock or other capital stock), whether by purchase, as a result of a stock dividend, stock split, recapitalization, combination, reclassification, exchange or change of such shares, or upon the exercise or conversion of any securities, acquired by such Company Stockholders after the date hereof and prior to the termination of this Agreement being collectively referred to herein as the “*Subject Shares*”); and

**WHEREAS**, as a condition to, and material inducement for, Buyer’s willingness to enter into the Merger Agreement, Buyer has requested that each Company Stockholder enter into this Agreement.

**NOW, THEREFORE**, in consideration of the premises set forth above, which are incorporated in this Agreement as if fully set forth below, and the representations, warranties, covenants and agreements contained in this Agreement and the Merger Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

## ARTICLE I

## Representations and Warranties of Each Company Stockholder

Each Company Stockholder hereby represents and warrants, severally and not jointly, to Buyer as follows:

1.1 Organization and Standing; Authorization. Such Company Stockholder, (a) if a natural person, is of legal age to execute this Agreement and is legally competent to do so, and (b) if the Company Stockholder is not a natural person, (i) has been duly organized and is validly existing and in good standing under the Laws of the state of its formation, (ii) has all requisite corporate or limited liability power and authority, as applicable, to own, lease and operate its properties and to carry on its business as now being conducted, (iii) has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby and (iv) is duly qualified or licensed and in good standing to do business in each jurisdiction in which the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary. If the Company Stockholder is not a natural person, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and no other corporate proceedings on the part of such Company Stockholder are necessary to authorize the execution and delivery of this Agreement or to consummate the transactions contemplated hereby.

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1.2 Binding Agreement. This Agreement has been, or shall be when delivered, duly and validly executed and delivered by such Company Stockholder and, assuming the due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes, or when delivered shall constitute, the valid and binding obligation of such Company Stockholder, enforceable against such Company Stockholder in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting creditor's rights generally and to general principles of equity (collectively, the "**Enforceability Exceptions**").

1.3 Governmental Approvals. No consents, waivers or approvals (collectively, "**Consents**") from, or notification requirements to, any Governmental Entity on the part of such Company Stockholder are required to be obtained or made in connection with the execution, delivery or performance by such Company Stockholder of this Agreement or the consummation by such Company Stockholder of the transactions contemplated hereby, other than (a) applicable requirements, if any, of the Securities Act of 1933, as amended (the "**Securities Act**"), the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and/ or any state "blue sky" securities Laws, and the rules and regulations thereunder and (b) where the failure to obtain or make such Consents or to make such filings or notifications has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Company Stockholder to enter into and perform this Agreement and to consummate the transactions contemplated hereby.

1.4 Non-Contravention. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and compliance with any of the provisions hereof by such Company Stockholder will not (a) conflict with or violate any provision of the certificate of incorporation or formation, bylaws, limited liability company agreement or similar organizational documents of such Company Stockholder, if and as applicable (collectively, the "**Organizational Documents**"), (b) conflict with or violate any Law, Order or required Consent applicable to such Company Stockholder, or (c) to the knowledge of such Company Stockholder (i) violate, conflict with or result in a breach of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) give rise to any obligation to obtain any third party consent or approval from any Person or (iv) except as to the Company Options, give any Person the right to declare a default, exercise any remedy, accelerate the maturity or performance, cancel, terminate or modify any right, benefit, obligation or other term under, any of the terms, conditions or provisions of, any material Contract of such Company Stockholder, except for any deviations from any of the foregoing clauses (b) or (c) that has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Company Stockholder to enter into and perform this Agreement and to consummate the transactions contemplated hereby.

1.5 Subject Shares. As of the date of this Agreement, such Company Stockholder has beneficial ownership of the Subject Shares set forth opposite such Company Stockholder's name on **Schedule A** hereto, and all such Subject Shares are owned by such Company Stockholder free and clear of all Liens, other than Liens pursuant to this Agreement, the Organizational Documents of the Company or applicable federal or state securities Laws. Other than the Subject Shares, such Company Stockholder does not legally own any Company Common Stock or any other Company capital stock or securities that are convertible into or exercisable for Company Common Stock or other capital stock. Such Company Stockholder has the sole right to vote the Subject Shares, and none of the Subject Shares are subject to any voting trust or other agreement, arrangement or restriction with respect to the voting of the Subject Shares, except as contemplated by this Agreement or the Organizational Documents of the Company.

1.6 Merger Agreement. Such Company Stockholder understands and acknowledges that Buyer is entering into the Merger Agreement in reliance upon such Company Stockholder's execution and delivery of this Agreement. Such Company Stockholder has received a copy of the Merger Agreement and is familiar with the provisions thereof.

## ARTICLE II

### Representations and Warranties of Buyer

Buyer hereby represents and warrants to the Company Stockholders as follows:

2.1 Organization and Standing. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Buyer is duly qualified or licensed and in good standing to do business in each jurisdiction in which the character of the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary.

2.2 Authorization: Binding Agreement. Subject to receipt of the Buyer Stockholder Approval, Buyer has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the board of directors of Buyer and, except for the Buyer Stockholder Approval, no other corporate proceedings on the part of Buyer are necessary to authorize the execution and delivery of this Agreement or to consummate the transactions contemplated hereby. Subject to receipt of the Buyer Stockholder Approval, this Agreement has been or shall be when delivered, duly and validly executed and delivered by Buyer and, assuming the due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes, or when delivered shall constitute, the valid and binding obligation of Buyer, subject to the Enforceability Exceptions.

2.3 Governmental Approvals. No Consent from, or notification requirements to, any Governmental Entity on the part of Buyer is required to be obtained or made in connection with the execution, delivery or performance by Buyer of this Agreement or the consummation by Buyer of the transactions contemplated hereby, other than (a) applicable requirements, if any, of the Securities Act, the Exchange Act, and/ or any state "blue sky" securities Laws, and the rules and regulations thereunder and (b) where the failure to obtain or make such Consents or to make such filings or notifications has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Buyer to enter into and perform this Agreement and to consummate the transactions contemplated hereby.

2.4 Non-Contravention. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby (subject to receipt of the Buyer Stockholder Approval), and compliance with any of the provisions hereof by Buyer will not (a) conflict with or violate any provision of Organizational Documents of Buyer, (b) conflict with or violate any Law, Order or required Consent applicable to Buyer or any of its properties or assets, or (c) (i) violate, conflict with or result in a breach of, (ii) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, (iii) result in the termination, withdrawal, suspension, cancellation or modification of, (iv) accelerate the performance required by Buyer under, (v) result in a right of termination or acceleration under, (vi) give rise to any obligation to make payments or provide compensation under, (vii) result in the creation of any Lien (other than a Permitted Lien) upon any of the properties or assets of Buyer under, (viii) give rise to any obligation to obtain any third party consent or approval from any Person or (ix) give any Person the right to declare a default, exercise any remedy, accelerate the maturity or performance, cancel, terminate or modify any right, benefit, obligation or other term under, any of the terms, conditions or provisions of, any material Contract of Buyer, except for any deviations from any of the foregoing clauses (b) or (c) that has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Buyer to enter into and perform this Agreement and to consummate the transactions contemplated hereby.

## ARTICLE III

### Agreement to Vote; Certain Other Covenants of the Company Stockholders

Each Company Stockholder covenants and agrees with Buyer during the term of this Agreement as follows:

#### 3.1 Agreement to Vote.

(a) In Favor of Merger. At any meeting of the stockholders of the Company called to seek the Company Requisite Approval, or at any adjournment thereof, or in connection with any written consent of the stockholders of the Company or in any other circumstances upon which a vote, consent or other approval with respect to the Merger Agreement, any other Company Ancillary Documents, the Merger, or any other transactions contemplated thereby is sought, each Company Stockholder shall (i) if a meeting is held, appear at such meeting or otherwise cause the Subject Shares to be counted as present at such meeting for purposes of establishing a quorum, and (ii) vote or cause to be voted (including by class vote and/or written consent, if applicable) the Subject Shares in favor of granting the Company Requisite Approval or, if there are insufficient votes in favor of granting the Company Requisite Approval, in favor of the adjournment such meeting of the stockholders of Company to a later date but not past the Outside Date.

(b) Against Other Transactions. At any meeting of stockholders of the Company or at any adjournment thereof, or in connection with any written consent of the stockholders of the Company or in any other circumstances upon which such Company Stockholder's vote, consent or other approval is sought, such Company Stockholder shall vote (or cause to be voted) the Subject Shares (including by withholding class vote and/or written consent, if applicable) against (i) any business combination agreement, merger agreement or merger (other than the Merger Agreement and the Merger), scheme of arrangement, business combination, consolidation, combination, sale of substantial assets, reorganization, recapitalization, dissolution, liquidation or winding up of or by Company or any public offering of any shares of capital stock of the Company, any of its material Subsidiaries, or, in case of a public offering only, a newly-formed holding company of the Company or such material Subsidiaries, other than in connection with the transactions contemplated by this Agreement, the Merger Agreement and any Company Ancillary Document, (ii) any acquisition proposal relating to the Company ("*Acquisition Proposal*"), and (iii) other than any amendment to Organizational Documents of the Company permitted under the terms of the Merger Agreement, any amendment of Organizational Documents of the Company or other proposal or transaction involving the Company or any of its Subsidiaries, which would materially impede, interfere with, delay or discourage, frustrate the purposes of, result in a breach by the Company of, prevent or nullify any provision of the Merger Agreement or any Company Ancillary Document, the Merger, or any transaction contemplated thereby or change in any manner the voting rights of any class of the Company's share capital.

(c) Revoke Other Proxies. Such Company Stockholder represents and warrants that any proxies heretofore given in respect of the Subject Shares that may still be in effect are not irrevocable, and such proxies have been or are hereby revoked, other than the voting and other arrangements under the Organizational Documents of the Company.

3.2 No Transfer. Other than (1) pursuant to this Agreement, (2) upon the consent of Buyer, or (3) to an Affiliate of such Company Stockholder (provided that such Affiliate shall enter into a written agreement, in form and substance reasonably satisfactory to Buyer, agreeing to be bound by this Agreement to the same extent as such Company Stockholder was with respect to such transferred Subject Shares), from the date of this Agreement until the date of termination of this Agreement, such Company Stockholder shall not, directly or indirectly, (i) (a) sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option, right or warrant to purchase or otherwise transfer, dispose of or agree to transfer or dispose of, directly or indirectly, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, any Subject Share, (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Subject Shares, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) publicly announce any intention to effect any transaction specified in clause (a) or (b) (the actions specified in clauses (a)-(c), collectively, "**Transfer**"), other than pursuant to the Merger, (ii) grant any proxies or enter into any voting arrangement, whether by proxy, voting agreement, voting trust, voting deed or otherwise (including pursuant to any loan of Subject Shares), or enter into any other agreement, with respect to any Subject Shares, in each case, other than as set forth in this Agreement or the voting and other arrangements under the Organizational Documents of the Company, (iii) take any action that would make any representation or warranty of such Company Stockholder herein untrue or incorrect, or have the effect of preventing or disabling such Company Stockholder from performing its obligations hereunder, or (iv) commit or agree to take any of the foregoing actions or take any other action or enter into any Contract that would (1) make any of its representations or warranties contained herein untrue or incorrect or (2) would have the effect of preventing such Company Stockholder from performing any of its obligations hereunder, in the case of either (1) or (2), in a manner which would impede, disrupt, prevent or otherwise adversely affect the consummation of the Merger. Any action attempted to be taken in violation of the preceding sentence will be null and void. Such Company Stockholder agrees with, and covenants to, Buyer that such Company Stockholder shall not request that the Company register the Transfer (by book-entry or otherwise) of any certificated or uncertificated interest representing any of the Subject Shares.

### 3.3 No Solicitation.

(a) During the term of this Agreement, each Company Stockholder agrees not to, directly or indirectly, (i) solicit, initiate or knowingly encourage or facilitate any inquiry, proposal, or offer which constitutes, or would lead to, an Acquisition Proposal in their capacity as such, (ii) participate in any discussions or negotiations regarding, or knowingly furnish to any Person (other than the Buyer, the Company, Merger Sub, the Company's and Buyer's Affiliates and their respective Representatives) any nonpublic information relating to the Company or its Subsidiaries, in connection with any Acquisition Proposal, (iii) approve or knowingly and intentionally recommend, or make any public statement approving or recommending an Acquisition Proposal, (iv) enter into any written letter of intent, merger agreement or similar agreement providing for an Acquisition Proposal, (v) make, or in any manner knowingly participate in a "solicitation" (as such term is used in the rules of the United States Securities and Exchange Commission ("**SEC**")) of proxies or powers of attorney or similar rights to vote, or seek to advise or influence any Person with respect to voting of the Company capital stock intending to facilitate any Acquisition Proposal or cause any holder of shares of Company capital stock not to vote to adopt the Merger Agreement and approve the Merger and the other transactions, (vi) become a member of a "group" (as such term is defined in Section 13(d) of the Exchange Act) with respect to any voting securities of the Company that takes any action in support of an Acquisition Proposal or (vii) otherwise resolve or agree to do any of the foregoing.

(b) Notwithstanding anything contained herein to the contrary, (i) no Company Stockholder shall be responsible for the actions of the Company or its board of directors (or any committee thereof), any Subsidiary of the Company, or any officers, directors (in their capacities as such), employees, professional advisors of any of the foregoing (the “*Company Related Parties*”), including with respect to any of the matters contemplated by this Section 3.3. (ii) no Company Stockholder makes any representations or warranties with respect to the action of any of the Company Related Parties, (iii) any breach by the Company of its obligations under the Merger Agreement shall not be considered a breach of this Section 3.3 (for the avoidance of doubt, it being understood the each Company Stockholder shall remain responsible for any breach by it or its Representatives (other than any such Representative that is a Company Related Party) of this Section 3.3), and (iv) nothing herein shall prevent a Company Stockholder from (1) giving truthful testimony obtained through subpoena or (2) providing truthful information pursuant to investigation by any Governmental Entity or in connection with the defense or prosecution of any action or Proceeding arising from or relating to this Agreement, the Merger Agreement, any other agreement contemplated hereby or thereby or the Merger.

3.4 Support of Merger. During the term of this Agreement, such Company Stockholder shall not take any action that would reasonably be expected to materially delay or prevent the satisfaction of any of the conditions to the Merger and the transactions contemplated by the Merger Agreement and each Company Ancillary Document.

3.5 Waiver of Appraisal and Dissenters’ Rights. Such Company Stockholder hereby irrevocably waives, and agrees not to exercise or assert, any dissenters’ or appraisal rights under Section 262 of the DGCL and any other similar statute in connection with the Merger and the Merger Agreement.

3.6 New Shares. In the event that prior to the Closing (i) any shares of the Company’s capital stock or other securities of the Company are issued or otherwise distributed to such Company Stockholder pursuant to any stock dividend or distribution, or any change in any shares of the Company’s capital stock by reason of any stock split-up, recapitalization, combination, exchange of shares or the like, (ii) such Company Stockholder acquires legal or beneficial ownership of any shares of the Company’s capital stock after the date of this Agreement, including upon exercise of options or settlement of restricted share units or (iii) such Company Stockholder acquires the right to vote or share in the voting of any shares of capital stock of the Company after the date of this Agreement (collectively, the “*New Securities*”), for the avoidance of doubt, the terms “Subject Shares” shall be deemed to refer to and include such New Securities (including all such stock dividends and distributions and any securities into which or for which any or all of the Subject Shares may be changed or exchanged into).

## ARTICLE IV

### Additional Agreements of the Parties

#### 4.1 Mutual Release.

(a) Company Stockholder Release. Each Company Stockholder on its own behalf, and each of its and their successors, assigns and executors (each, a “**Stockholder Releasor**”), effective as at the Effective Time, shall be deemed to have, and hereby does, irrevocably, unconditionally, knowingly and voluntarily release, waive, relinquish and forever discharge the Company and its Subsidiaries and each of their respective successors, assigns, heirs, executors, officers, directors, partners, managers and employees (in each case in their capacity as such) (each, a “**Company Releasee**”), from (i) any and all obligations or duties the Company or any of its Subsidiaries has prior to or as of the Effective Time to such Stockholder Releasor or (ii) all claims, demands, Liabilities, defenses, affirmative defenses, setoffs, counterclaims, actions and causes of action of whatever kind or nature, whether known or unknown, which any Stockholder Releasor has prior to or as of the Effective Time, against any Company Releasee, in the case of clause (i) and (ii), arising out of, based upon or resulting from (1) any ownership or purported ownership interest in the Company, (2) any options or rights to purchase stock of the Company, (3) the termination of any such interests, (4) the shares of Company Common Stock issuable to holders of Company equity awards, or (5) the consideration received by such Company Stockholder in connection with the Merger (“**Stockholder Claims**”), and any and all Stockholder Claims that the Stockholder Releasor may have against the Company Releasee with respect thereto whether pursuant to any Contract or otherwise, whether known or unknown, and which occurred, existed, was taken, permitted or begun prior to the Effective Time (except in the event of Fraud on the part of a Company Releasee); provided, however, that nothing contained in this Section 4.1(a) shall release, waive, relinquish, discharge or otherwise affect the rights or obligations of any party (i) arising under this Agreement, the Merger Agreement, the Company Ancillary Documents (including under any other agreement entered into pursuant to or in connection with the Merger Agreement), or the Company’s Organizational Documents, (ii) for exculpation, expense advancement, indemnification or contribution obligations of any Stockholder Releasor to any present or former officer or director of the Company or any of its Subsidiaries or under the Organizational Documents or the Company or any of its Subsidiaries as in effect as of the Effective Time, including in any Stockholder Releasor’s capacity as an officer or director of the Company or any of its Subsidiaries, (iii) arising under any then-existing insurance policy of the Company or any of its Subsidiaries, (iv) pursuant to a contract and/or Company or any of its Subsidiaries policy, for reimbursements for reasonable and necessary business expenses incurred and documented prior to the Effective Time, or (v) for any claim for Fraud.

(b) Company Release. Each of the Company and its Subsidiaries, on its own behalf, and each of its successors, assigns and executors (each, a “**Company Releasor**”), effective as at the Effective Time, shall be deemed to have, and hereby does, irrevocably, unconditionally, knowingly and voluntarily release, waive, relinquish and forever discharge each Company Stockholder and each of their respective successors, assigns, heirs, executors, officers, directors, partners, managers and employees (in each case in their capacity as such) (each, a “**Stockholder Releasee**”), from (i) any and all obligations or duties the Company Stockholder has prior to or as of the Effective Time to such Company Releasor or (ii) all claims, demands, Liabilities, defenses, affirmative defenses, setoffs, counterclaims, actions and causes of action of whatever kind or nature, whether known or unknown, which any Company Releasor has prior to or as of the Effective Time, against any Stockholder Releasee, in the case of clause (i) and (ii), arising out of, based upon or resulting from such Company Stockholder’s direct or indirect ownership or purported ownership interest in the Company prior to the Effective Time or the consideration paid to such Company Stockholder in connection with the Merger (“**Company Claims**”), and any and all Company Claims that the Company Releasor may have against the Stockholder Releasee with respect thereto whether pursuant to any Contract or otherwise, whether known or unknown, and which occurred, existed, was taken, permitted or begun prior to the Effective Time (except in the event of Fraud on the part of a Stockholder Releasee); provided, however, that nothing contained in this Section 4.1(b) shall release, waive, relinquish, discharge or otherwise affect the rights or obligations of any party (i) arising under this Agreement, the Merger Agreement, the Company Ancillary Documents (including under any other agreement entered into pursuant to or in connection with the Merger Agreement), or (ii) for any claim for Fraud.



4.2 Termination. This Agreement shall terminate upon the earliest of (a) the Effective Time (provided, however, that upon such termination, Section 3.5, Section 4.1, this Section 4.2, and Article V shall survive indefinitely), (b) the termination of the Merger Agreement in accordance with its terms, (c) the date on which the Outside Date in the Merger Agreement is extended without the consent of Company Stockholders holding, in the aggregate, a majority of the Company Common Stock, and (d) the date on which the Merger Agreement is amended or otherwise modified in any manner that is material and adverse to the undersigned Company Stockholder, and upon such termination, no party shall have any liability hereunder other than for its willful and material breach of this Agreement prior to such termination; provided, however, that no party to this Agreement shall be relieved from any liability to the other party hereto resulting from such party's knowing and intentional material breach of any of its representations or warranties as set forth in this Agreement, or such party's material breach of any of its covenants or other agreements set forth in this Agreement, which material breach constitutes, or is a consequence of, a purposeful act or failure to act by such party with the knowledge that the taking of such act or failure to take such act would cause a material breach of this Agreement.

4.3 No Other Obligations. (a) Nothing in this Agreement will obligate a Company Stockholder to (i) become a plaintiff in any litigation or other adversarial proceeding or (ii) pay any expenses of any other party and (b) no Company Stockholder shall have any duty, whether a fiduciary duty, duty of confidentiality or otherwise, to any other Company Stockholder or any other Person, in each case, save for and subject to the obligations expressly set forth in this Agreement.

4.4 Stockholder Capacity. The parties acknowledge that this Agreement is entered into by or on behalf of the undersigned Company Stockholder in such Company Stockholder's capacity as the record or beneficial owner of the Company Common Stock. Nothing in this Agreement restricts or limits any action taken by such Company Stockholder or its Affiliates' representatives, members, or shareholders, solely in their capacity as a director or officer of the Company (but not on its own behalf as a Company Stockholder) and the taking of any actions (or failure to act) that is necessary for them to comply with their fiduciary duties as a director or officer of the Company and such actions will be deemed not to constitute a breach of this Agreement. Any Person that is not a Company Stockholder shall have no liability under this Agreement and no recourse shall be had against any such Person under this Agreement, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable Law.

4.5 Further Assurances. Subject to the terms and conditions of this Agreement, upon written request by Buyer or the Company, as applicable, each Company Stockholder shall (a) execute and deliver, or cause to be executed and delivered, such additional or further consents, documents and other instruments as Buyer or the Company may reasonably request for the purpose of effectively carrying out the transactions contemplated by this Agreement, the Merger Agreement and the other Company Ancillary Documents and (b) refrain from actions inconsistent with its obligations under this Agreement, the Merger Agreement of any Company Ancillary Document.

## ARTICLE V

### General Provisions

5.1 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or sent by overnight courier (providing proof of delivery) to the Company and Buyer in accordance with Section 10.2 of the Merger Agreement and to such Company Stockholder at its address set forth set forth on **Schedule A** hereto (or at such other address for a party as shall be specified by like notice).

5.2 Disclosure. Each of the Company Stockholders authorizes Buyer to publish and disclose in any announcement or disclosure required by the SEC, the Company Stockholder's identity and ownership of the Subject Shares and the nature of the Company Stockholder's obligations under this Agreement; provided, that prior to any such publication or disclosure Buyer has provided the Company Stockholder with an opportunity to review and comment on such announcement or disclosure, which comments Buyer will consider in good faith.

5.3 Governing Law. This Agreement and all Proceedings (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by the Laws of the State of Delaware (without giving effect to choice of law principles thereof).

5.4 Limitations on Damages. In no event shall any party have any liability for any indirect, incidental, special, consequential or punitive damages, arising out of or relating to this Agreement or the subject matter hereof, no matter what theory of liability, and even if advised of the possibility or probability of such damages.

5.5 Miscellaneous. The provisions of Article X of the Merger Agreement are incorporated herein by reference, *mutatis mutandis*, as if set forth in full herein.

[Signature pages follow]

IN WITNESS WHEREOF, each party has duly executed this Agreement, all as of the date first written above.

**NAUTICUS ROBOTICS, INC.**

Signature: /s/ Nicolaus A. Radford

Name: Nicolaus A. Radford

Title: Chief Executive Officer

*[Signature Page to Company Stockholder Support Agreement]*

IN WITNESS WHEREOF, each party has duly executed this Agreement, all as of the date first written above.

**COMPANY STOCKHOLDERS:**

/s/ Carl Embry

CARL EMBRY

/s/ Neil Manning

NEIL MANNING

/s/ Euan Tait

EUAN TAIT

**SCHLUMBERGER TECHNOLOGY CORPORATION**

By: /s/ Arindam Bhattacharya

Name: Arindam Bhattacharya

Title: Vice President

*[Signature Page to Company Stockholder Support Agreement]*

**STOCKHOLDER LOCK-UP AGREEMENT**

THIS STOCKHOLDER LOCK-UP AGREEMENT (this "Agreement") is dated as of [●], 2023, by and between [●] (the "Holder") and Nauticus Robotics, Inc., a Delaware corporation ("Nauticus"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Merger Agreement (as defined below).

**BACKGROUND**

A. Nauticus, 3D Merger Sub, Inc., a Delaware corporation ("Merger Sub"), and 3D at Depth, Inc., a Delaware corporation (the "Company"), entered into an Agreement and Plan of Merger dated as of October 2, 2023 (the "Merger Agreement").

B. Pursuant to the Merger Agreement, Nauticus will become the 100% stockholder of the Company (the "Transaction").

C. The Holder is the record and/or beneficial owner of equity securities of the Company, which will be exchanged for common stock of Nauticus pursuant to the Merger Agreement.

D. As a condition of, and as a material inducement for the Company to enter into and consummate the transactions contemplated by the Merger Agreement, the Holder has agreed to execute and deliver this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**AGREEMENT****1. Lock-Up.**

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Lock-up Shares (as defined below), enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such Lock-up Shares, whether any of these transactions are to be settled by delivery of any such Lock-up Shares, in cash or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any security of Nauticus.

(b) In furtherance of the foregoing, Nauticus will (i) place an irrevocable stop order on all Lock-up Shares, including those which may be covered by a registration statement, and (ii) notify Nauticus' transfer agent in writing of the stop order and the restrictions on such Lock-up Shares under this Agreement and direct Nauticus' transfer agent not to process any attempts by the Holder to resell or transfer any Lock-up Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

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(d) For purpose of this Agreement, the “Lock-up Period” means (1) for ninety percent (90%) of the Lock-Up Shares (the “Majority Lock-Up Shares”), the period that ends 180 days after the closing date of the Transaction, and (2) for ten percent (10%) of the Lock-Up Shares (the “Minority Lock-Up Shares”), the earlier of (i) the effective date of a registration statement on which the Lock-Up Shares are included or (ii) the period that ends 90 days after the closing date of the Transaction; provided, however, until such time as the restrictions set forth herein on the Majority Lock-Up Shares are released, (3) the Minority Lock-Up Shares may not be sold for a price lower than the Per Share Equity Consideration Value (as defined in the Merger Agreement) and (4) Holder shall not sell more Minority Lock-Up Shares (which shares shall be sold under a Rule 10b5-1 or other allowable plan) on any particular trading day than a number of shares equal to the lesser of (i) 10% of the average daily volume of shares of Nauticus common stock sold on the NASDAQ Composite during the prior week and (ii) 5,000 shares; provided, further, in the event Nauticus completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of Nauticus’ stockholders having the right to exchange their shares for common stock, cash, securities or other property, then the Lock-Up Shares shall be released from the restrictions set forth herein to the extent necessary to allow such Holder to participate in such transaction.

The restrictions set forth herein shall not apply to: (1) transfers or distributions to the Holder’s current or former general or limited partners, managers or members, stockholders, other equity holders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (2) transfers by bona fide gift to a member of the Holder’s immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder’s immediate family for estate planning purposes; (3) by virtue of the laws of descent and distribution upon death of the Holder; (4) pursuant to a qualified domestic relations order, in each case where such transferee agrees to be bound by the terms of this Agreement; or (5) transfers or distributions of, or other transactions involving, securities other than the Lock-up Shares (including, without limitation, securities acquired in the Transaction Financing or in open market transactions); provided, no transfer hereunder shall be valid or effective unless such transferee agrees in writing to be bound by the terms of this Agreement as if she were an original party hereto.

In addition, the restrictions set forth herein shall not apply to any bona fide third-party tender offer, merger, consolidation, business combination, stock purchase or other similar transaction or series of related transactions after the Closing Date, if such transaction or transactions would result in a Change of Control; provided that in the event that such tender offer, merger, consolidation, business combination, stock purchase or transaction or series of related transactions is not completed, the Lock-up Shares shall remain subject to the restrictions set forth herein. A “Change of Control” means (whether by tender offer, merger, consolidation, asset sale or other similar transaction, whether in one or a series of related transactions): (a) the sale of all or substantially all of the consolidated assets of Nauticus and Nauticus subsidiaries to a third-party Nauticus; (b) a sale resulting in no less than a majority of the voting power of Nauticus being held by person that did not own a majority of the voting power prior to such sale; or (c) a merger, consolidation, recapitalization or reorganization of Nauticus with or into a third-party Nauticus that results in the inability of the pre-transaction equity holders to designate or elect a majority of the Board of Directors (or its equivalent) of the resulting entity or its parent company. In the event that all or a portion of the securities subject to any other lock-up agreement entered into, or otherwise applicable, in connection with the Transaction are released early from the restrictions of such other such other lock-up agreement (whether by release, waiver, amendment, modification, termination or otherwise), the Lock-up Shares subject to this Agreement shall be released on a pro rata basis.

2. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the others and to all third party beneficiaries of this Agreement that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is the binding and enforceable obligation of such party, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound.

3. Beneficial Ownership. The Holder hereby represents and warrants that it does not beneficially own, directly or through its nominees (as determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder), any shares of capital stock of Nauticus, or any economic interest in or derivative of such stock, other than those securities specified on the signature page hereto. For purposes of this Agreement, the shares of Nauticus received by the Holder as merger consideration in the Transaction and beneficially owned by the Holder as specified on the signature page hereto, as updated prior to the merger effective time of the Transaction, are collectively referred to as the "Lock-up Shares."

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00 PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by email, on the date that transmission is confirmed electronically, if by 4:00 PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to Nauticus, to:

Nauticus Robotics, Inc.  
17146 Feathercraft Lane, Suite 450  
Webster, TX 77598  
Attention: Legal Department  
Email: legal@nautic.us

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

Winston & Strawn LLP  
800 Capitol Street, Suite 2400  
Houston, TX 77002  
Attention: Michael Blankenship  
Email: mblankenship@winston.com

(b) If to the Holder, to the address set forth on the Holder's signature page hereto, with a copy, which shall not constitute notice, to:

Carl Embry

\_\_\_\_\_  
E-mail: [●]

or to such other address as any party may have furnished to the others in writing in accordance herewith.

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Closing. Notwithstanding anything to the contrary contained herein, this Agreement and all rights and obligations of the parties hereunder shall be of no force or effect until and unless the Closing occurs pursuant to the Merger Agreement.

8. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

9. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by Nauticus and its successors and assigns.

10. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

11. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

12. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

13. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

14. Governing Law. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Delaware.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provision in the Merger Agreement, the terms of this Agreement shall control.



IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**Nauticus Robotics, Inc.**

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

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**HOLDER**

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

**NUMBER OF MAJORITY LOCK-UP SHARES:**

\_\_\_\_\_ <sup>1</sup>

**NUMBER OF MINORITY LOCK-UP SHARES:**

\_\_\_\_\_ <sup>2</sup>

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<sup>1</sup> To be filled in at Closing with the number of shares of Nauticus common stock received by the Holder as merger consideration.  
<sup>2</sup> To be filled in at Closing with the number of shares of Nauticus common stock received by the Holder as merger consideration.

**FORM OF LARGE STOCKHOLDER LOCK-UP AGREEMENT**

THIS LARGE STOCKHOLDER LOCK-UP AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2023, by and between \_\_\_\_\_ (the "Holder") and Nauticus Robotics, Inc., a Delaware corporation ("Nauticus"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Merger Agreement (as defined below).

**BACKGROUND**

A. Nauticus, 3D Merger Sub, Inc., a Delaware corporation ("Merger Sub"), and 3D at Depth, Inc., a Delaware corporation (the "Company"), entered into an Agreement and Plan of Merger dated as of \_\_\_\_\_, 2023 (the "Merger Agreement").

B. Pursuant to the Merger Agreement, Nauticus will become the 100% stockholder of the Company (the "Transaction").

C. The Holder is the record and/or beneficial owner of equity securities of the Company, which will be exchanged for common stock of Nauticus pursuant to the Merger Agreement.

D. As a condition of, and as a material inducement for the Company to enter into and consummate the transactions contemplated by the Merger Agreement, the Holder has agreed to execute and deliver this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**AGREEMENT**

1. Lock-Up.

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Lock-up Shares (as defined below), enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such Lock-up Shares, whether any of these transactions are to be settled by delivery of any such Lock-up Shares, in cash or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any security of Nauticus.

(b) In furtherance of the foregoing, Nauticus will (i) place an irrevocable stop order on all Lock-up Shares, including those which may be covered by a registration statement, and (ii) notify Nauticus' transfer agent in writing of the stop order and the restrictions on such Lock-up Shares under this Agreement and direct Nauticus' transfer agent not to process any attempts by the Holder to resell or transfer any Lock-up Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(d) For purpose of this Agreement, the “Lock-up Period” means the period that ends 180 days after the closing date of the Transaction; provided, that, in the event Nauticus completes a liquidation, merger, capital stock exchange, reorganization or other similar transaction that results in all of Nauticus’ stockholders having the right to exchange their shares for common stock, cash, securities or other property, then the Lock-Up Shares shall be released from the restrictions set forth herein to the extent necessary to allow such Holder to participate in such transaction.

The restrictions set forth herein shall not apply to: (1) transfers or distributions to the Holder’s current or former general or limited partners, managers or members, stockholders, other equity holders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (2) transfers by bona fide gift to a member of the Holder’s immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder’s immediate family for estate planning purposes; (3) by virtue of the laws of descent and distribution upon death of the Holder; (4) pursuant to a qualified domestic relations order, in each case where such transferee agrees to be bound by the terms of this Agreement; or (5) transfers or distributions of, or other transactions involving, securities other than the Lock-up Shares (including, without limitation, securities acquired in the Transaction Financing or in open market transactions); provided, no transfer hereunder shall be valid or effective unless such transferee agrees in writing to be bound by the terms of this Agreement as if she were an original party hereto.

In addition, the restrictions set forth herein shall not apply to any bona fide third-party tender offer, merger, consolidation, business combination, stock purchase or other similar transaction or series of related transactions after the Closing Date, if such transaction or transactions would result in a Change of Control; provided that in the event that such tender offer, merger, consolidation, business combination, stock purchase or transaction or series of related transactions is not completed, the Lock-up Shares shall remain subject to the restrictions set forth herein. A “Change of Control” means (whether by tender offer, merger, consolidation, asset sale or other similar transaction, whether in one or a series of related transactions): (a) the sale of all or substantially all of the consolidated assets of Nauticus and Nauticus subsidiaries to a third-party Nauticus; (b) a sale resulting in no less than a majority of the voting power of Nauticus being held by person that did not own a majority of the voting power prior to such sale; or (c) a merger, consolidation, recapitalization or reorganization of Nauticus with or into a third-party Nauticus that results in the inability of the pre-transaction equity holders to designate or elect a majority of the Board of Directors (or its equivalent) of the resulting entity or its parent company. In the event that all or a portion of the securities subject to any other lock-up agreement entered into, or otherwise applicable, in connection with the Transaction are released early from the restrictions of such other such other lock-up agreement (whether by release, waiver, amendment, modification, termination or otherwise), the Lock-up Shares subject to this Agreement shall be released on a pro rata basis.

2. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the others and to all third party beneficiaries of this Agreement that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is the binding and enforceable obligation of such party, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party’s obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound. Nauticus represents and warrants that each stockholder of the Company holding at least two percent (2%) of the outstanding shares of capital stock (including options) of the Company has entered into a lock-up agreement or other form of agreement on substantially the same terms as the terms provided for in this Agreement; provided, however, Carl Embry, Neil Manning and Euan Tait, have each entered into a lock-up agreement which provides, with respect to ten percent (10%) of his lock-up shares, the lock-up period will end on the earlier of (i) the effective date of a registration statement on which such lock-up shares are included or (ii) the period that ends 90 days after the closing date of the Transaction; provided, further, Adam Lowry will enter into a Small Stockholder Lock-Up Agreement (as defined in the Merger Agreement) upon the Transaction closing unless such requirement is waived by the Chief Legal Officer of Nauticus at the closing.

3. Beneficial Ownership. For purposes of this Agreement, the shares of Nauticus received by the Holder as merger consideration in the Transaction and beneficially owned by the Holder as specified on the signature page hereto, as updated in connection with the Transaction closing are collectively referred to as the "Lock-up Shares."

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. Any notices required or permitted to be sent hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00 PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by email, on the date that transmission is confirmed electronically, if by 4:00 PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows (excluding telephone numbers, which are for convenience only), or to such other address as a party shall specify to the others in accordance with these notice provisions:

(a) If to Nauticus, to:

Nauticus Robotics, Inc.  
17146 Feathercraft Lane, Suite 450  
Webster, TX 77598  
Attention: Legal Department  
Email: legal@nautic.us

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

Winston & Strawn LLP  
800 Capitol Street, Suite 2400  
Houston, TX 77002  
Attention: Michael Blankenship  
Email: mblankenship@winston.com

(b) If to the Holder, to the address set forth on the Holder's signature page hereto, with a copy, which shall not constitute notice, to:

[●]

Attention: [●]

E-mail: [●]

or to such other address as any party may have furnished to the others in writing in accordance herewith.

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Closing. Notwithstanding anything to the contrary contained herein, this Agreement and all rights and obligations of the parties hereunder shall be of no force or effect until and unless the Closing occurs pursuant to the Merger Agreement.

8. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

9. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by Nauticus and its successors and assigns.

10. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

11. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

12. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

13. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

14. Governing Law. The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Delaware.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provision in the Merger Agreement, the terms of this Agreement shall control.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**Nauticus Robotics, Inc.**

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

\_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**HOLDER**

[•]

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

Address:

[•]

**NUMBER OF LOCK-UP SHARES:**  
\_\_\_\_\_ 1

<sup>1</sup> To be filled in at Closing with the number of shares of Nauticus common stock received by the Holder as merger consideration.

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October 2, 2023

Schlumberger Technology Corporation  
5599 San Felipe, 16<sup>th</sup> Floor  
Houston, Texas 77056  
Attn: David Gooch

Dear David:

In connection with the merger (the "Merger") contemplated by the Agreement and Plan of Merger (the "Merger Agreement"), dated on or about October 2, 2023, by and among Nauticus Robotics, Inc., a Delaware corporation ("Nauticus"), 3D Merger Sub, Inc., a Delaware corporation ("Merger Sub"), and 3D at Depth, Inc., a Delaware corporation (the "Company"), Nauticus has agreed to execute and deliver this letter agreement (this "Letter Agreement") to provide for certain matters with respect to the composition of the board of directors of Nauticus following the Closing (the "Board"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

**1. Board Composition:** Effective as of, and from and after, the Closing, Nauticus shall take all Necessary Action (as defined below) to cause an individual designated by Schlumberger Technology Corporation ("SLB"), and such designee, the "SLB Designee") to be appointed to, and otherwise remain on, subject to the applicable stockholder vote, the Board of Directors. Nauticus shall take all Necessary Action to cause the SLB Designee to be appointed, subject to the applicable stockholder vote, as a director of the Board of Directors for an initial term expiring at the annual meeting of the stockholders held in the third year following the year of the SLB Designee's election. Thereafter, as long as SLB and its affiliates own at least twenty percent (20%) of the voting power of all of the then outstanding shares of voting stock of Nauticus, Nauticus shall take all Necessary Action to cause the SLB Designee to be appointed, subject to the applicable stockholder vote, as a director of the Board of Directors for consecutive three-year terms. SLB acknowledges and agrees that any SLB Designee to be appointed to the Board pursuant to this Section 1 or Section 2 below must not be prohibited or disqualified from serving as a director of Nauticus pursuant to any rule or regulation of the United States Securities and Exchange Commission or the listing requirements of Nasdaq (for the avoidance of doubt, after giving effect to any exemptions available to a controlled company). "Necessary Action" means, with respect to a specified result, all actions (to the extent such actions are permitted by law and, in the case of any action by Nauticus that requires a vote or other action on the part of the Board (or a committee thereof), to the extent such action is consistent with the fiduciary duties that the directors may have in such capacity) necessary to cause such result, subject to the applicable stockholder vote, including, without limitation:

- a. causing the adoption of resolutions of the Board (or a committee thereof) or the execution of written consents of the Board (or a committee thereof);
  - b. executing agreements and instruments;
  - c. making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result, including, but not limited to, including the SLB Designee in a proxy statement (including the proxy statement filed by Nauticus in connection with approval of the Merger) or similar document in connection with the election of Nauticus directors and soliciting proxies for the election of the SLB Designee;
-

- d. recommending that the stockholders of Nauticus vote in favor of the election of the SLB Designee at any meetings of such stockholders; and
- e. otherwise supporting the SLB Designee for election in a manner no less rigorous and favorable than the manner in which Nauticus supports or has historically supported its other nominees.

**2. Vacancies:** If at any time prior to the Expiration Date, a vacancy is created on the Board as a result of the death, disability, retirement, resignation or removal of the SLB Designee, SLB shall be entitled to nominate a replacement director to fill such vacancy (any such replacement director to be considered the SLB Designee for purposes of this Letter Agreement), and Nauticus agrees to take all Necessary Action to cause the individual designated by SLB pursuant to this Section to be appointed to the Board for the remainder of the term; provided, that such designee may not previously have been a director of Nauticus who was removed for cause.

**3. Removal:** Prior to the end of the three-year term of the SLB Designee following the Expiration Date, Nauticus shall take all Necessary Action to ensure that the SLB Designee is not removed from the Board other than for cause.

**4. Indemnification; Insurance:** Promptly following the appointment of the SLB Designee to the Board, Nauticus and the SLB Designee shall enter into an Indemnity Agreement (the "Indemnity Agreement") substantially in the form attached hereto as Exhibit A. From and after the date of such Indemnity Agreement, Nauticus shall (a) otherwise indemnify and exculpate the SLB Designee to the same extent as each other member of the Board, and (b) maintain at all times director and officer liability insurance on commercially reasonable terms, which insurance shall cover the SLB Designee on no less favorable terms than such insurance covering each other member of the Board; provided, that upon removal or resignation of the SLB Designee for any reason, Nauticus shall take all actions reasonably necessary to extend such director and officer liability insurance coverage with respect to the SLB Designee for a period of not less than six (6) years from any such event in respect of any act or omission of the SLB Designee occurring at or prior to such event.

**5. Term:** The date on which SLB no longer owns twenty percent (20%) of the voting power of all of the then outstanding shares of voting stock of Nauticus is referred to herein as the "Expiration Date." This Letter Agreement shall terminate, and the parties hereto shall have no rights or obligations hereunder except as set forth in Sections 3 and 4, as of and following the Expiration Date. If the Closing does not occur or the Merger Agreement is otherwise terminated in accordance with its terms, then this Letter Agreement shall be automatically deemed terminated without any further action by the parties hereto.

Sincerely,

NAUTICUS ROBOTICS, INC.

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

Name: Nicolaus A. Radford

Title: Chief Executive Officer

Accepted and agreed as of the date first written above:

SCHLUMBERGER TECHNOLOGY CORPORATION

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

Name: Arindam Bhattacharya

Title: Vice President

[Signature Page to Letter Agreement]

## **EXHIBIT A**

*Execution Version*

### **INDEMNIFICATION AGREEMENT**

This Indemnification Agreement (“Agreement”) is made as of \_\_\_\_\_, 2023, by and between Nauticus Robotics, Inc., a Delaware corporation (the “Company”), and a member of the board of directors and/or officer of the Company, as applicable (“Indemnitee”). This Agreement supersedes and replaces any and all previous Agreements between the Company and Indemnitee covering the subject matter of this Agreement.

#### **RECITALS**

WHEREAS, the board of directors of the Company (the “Board”) believes that highly competent persons have become more reluctant to serve publicly held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, foreign and domestic, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises, foreign and domestic, are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Bylaws of the Company (the “Bylaws”) require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the “DGCL”). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification may increase the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company and its stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Second Amended and Restated Certificate of Incorporation of the Company (the “Certificate of Incorporation”), the Bylaws, and any resolutions adopted pursuant thereto, as well as any rights of Indemnitee under any directors’ and officers’ liability insurance policy, and this Agreement shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Certificate of Incorporation, Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve or continue to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve or continue to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve or continue to serve as a director and/or officer of the Company, as applicable. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries or any Enterprise), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), other applicable formal severance policies duly adopted by the Board, or, with respect to service as a director or officer of the Company, by the Certificate of Incorporation, the Bylaws, and the DGCL. The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee has ceased to serve as a director and/or officer of the Company, as applicable, as provided in Section 16 hereof.

Section 2. Definitions. As used in this Agreement:

(a) References to "agent" shall mean any person who is or was a director, officer, or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifty and one-tenth percent (50.1%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors;

ii. Change in Board of Directors. During any period of three (3) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(b)(i), 2(b)(iii) or 2(b)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the Surviving Entity) more than 50% of the combined voting power of the voting securities of the Surviving Entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such Surviving Entity;

iv. Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale, lease, exchange or other transfer by the Company, in one or a series of related transactions, of all or substantially all of the Company's assets; and

v. Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(b), the following terms shall have the following meanings:

(A) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(B) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(D) “Surviving Entity” shall mean the surviving entity in a merger or consolidation or any entity that controls, directly or indirectly, such surviving entity.

(c) “Corporate Status” describes the status of a person who is or was a director, trustee, partner, managing member, officer, employee, agent or fiduciary of the Company or of any other corporation, limited liability company, partnership or joint venture, trust or other enterprise, foreign or domestic, which such person is or was serving at the request of the Company.

(d) “Disinterested Director” shall mean a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “Enterprise” shall mean the Company and any other foreign or domestic corporation, limited liability company, partnership, joint venture, trust or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, employee, agent or fiduciary.

(f) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees and other costs of experts and other professionals, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses of the types customarily incurred in connection with, or as a result of, prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a deponent or witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, (ii) expenses incurred in connection with recovery under any directors’ and officers’ liability insurance policies maintained by the Company, regardless of whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement or Expenses or insurance recovery, as the case may be, and (iii) for purposes of Section 14(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, the Certificate of Incorporation, the Bylaws or under any directors’ and officers’ liability insurance policies maintained by the Company, by litigation or otherwise. The parties agree that for the purposes of any advancement of Expenses for which Indemnitee has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of Indemnitee’s counsel as being reasonable in the good faith judgment of such counsel shall be presumed conclusively to be reasonable. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “Independent Counsel” shall mean a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(h) The term "Proceeding" shall include any threatened, pending or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, legislative, regulatory or investigative (formal or informal) nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of Indemnitee's Corporate Status, by reason of any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting pursuant to Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses can be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this paragraph.

(i) Reference to "other enterprise" shall include employee benefit plans; references to "fines" shall include any excise tax assessed with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, fines and amounts paid in settlement) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation, the Bylaws, vote of the Company's stockholders or disinterested directors or applicable law.



Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court (as hereinafter defined) or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness, is or was made (or asked) to respond to discovery requests in any Proceeding, or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 7. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of Expenses, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

Section 8. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) by reason of Indemnitee's Corporate Status.

(b) For purposes of Section 8(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

Section 9. Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification payment in connection with any claim involving Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(b) hereof) or similar provisions of state statutory law or common law, (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act) or (iii) any reimbursement of the Company by Indemnitee of any compensation pursuant to any compensation recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

(c) except as provided in Section 14(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) such payment arises in connection with any mandatory counterclaim or cross claim brought or raised by Indemnitee in any Proceeding (or any part of any Proceeding), or (iii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 10. Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary (other than Section 14(d)), the Company shall advance, to the extent not prohibited by law, the Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding (or any part of any Proceeding) not initiated by Indemnitee or any Proceeding initiated by Indemnitee with the prior approval of the Board as provided in Section 9(c), and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. In accordance with Section 14(d), advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking providing that the Indemnitee undertakes to repay the amounts advanced (without interest) by the Company pursuant to this Section 10, if and only to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required other than the execution of this Agreement. This Section 10 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 9.

Section 11. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such Proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any Proceeding (in whole or in part) if such settlement would impose any Expense, judgment, liability, fine, penalty or limitation on Indemnitee in respect of which Indemnitee is not entitled to be indemnified hereunder without Indemnitee's prior written consent, which shall not be unreasonably withheld.

Section 12. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 11(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Board, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by or on behalf of Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Delaware Court has determined that such objection is without merit. If, within twenty (20) days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 11(a) hereof and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) If the Company disputes a portion of the amounts for which indemnification is requested, the undisputed portion shall be paid and only the disputed portion withheld pending resolution of any such dispute.

Section 13. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 14(e), if the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 13(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 12(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, financial advisor or other expert selected with reasonable care by or on behalf of the Enterprise. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any director, officer, trustee, partner, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

#### Section 14. Remedies of Indemnitee.

(a) Subject to Section 14(e), in the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6 or 7 or the second to last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 8 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 14(a). The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 14 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that, to the fullest extent permitted by law, the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall, to the fullest extent permitted by law, indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by or on behalf of Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company if, in the case of indemnification, Indemnitee is wholly successful on the underlying claims; if Indemnitee is not wholly successful on the underlying claims, then such indemnification shall be only to the extent Indemnitee is successful on such underlying claims or otherwise as permitted by law, whichever is greater.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

Section 15. Non-exclusivity; Survival of Rights; Insurance; Subrogation

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement (i) shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise and (ii) shall be interpreted independently of, and without reference to, any other such rights to which Indemnitee may at any time be entitled. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate of Incorporation, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim or of the commencement of a Proceeding, as the case may be, to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) Subject to Section 18, in the event of any payment made by the Company under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Subject to Section 18, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.



(e) Subject to Section 18, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, foreign or domestic, shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust or other enterprise, foreign or domestic.

Section 16. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee ceases to have any Corporate Status or (b) one (1) year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding (including any appeal thereof) commenced by Indemnitee pursuant to Section 14 of this Agreement relating thereto. The indemnification and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or of any other Enterprise, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives. The Company shall require and shall cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company to, by written agreement, expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

Section 17. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 18. Primary Responsibility. The Company acknowledges that to the extent Indemnitee is serving on the Board at the request or direction of a foreign or domestic corporation, limited liability company, partnership, joint venture, trust, enterprise or other entity and/or certain of its affiliates (collectively, the “Secondary Indemnitors”), Indemnitee may have certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitors. Notwithstanding anything to the contrary set forth herein, the Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Certificate of Incorporation, the Bylaws or this Agreement, and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 18. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under the Certificate of Incorporation, the Bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Certificate of Incorporation, the Bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 18.

Section 19. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving or continuing to serve as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation, the Bylaws, any directors’ and officers’ insurance maintained by the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 20. Indemnification for Expenses Incurred in Enforcing Rights. The Company shall indemnify Indemnitee against any and all Expenses that are incurred by Indemnitee in connection with any action brought by Indemnitee for (i) indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement or under applicable law or the Company’s Certificate of Incorporation or Bylaws now or hereafter in effect relating to indemnification for indemnifiable events, and/or (ii) recovery under directors’ and officers’ liability insurance policies maintained by the Company, but only in the event that Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. In addition, the Company shall, if so requested by Indemnitee, advance the foregoing Expenses to Indemnitee, subject to and in accordance with Section 10.

Section 21. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 22. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 23. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed, (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received or (e) sent by email and receipted for by the party to whom said notice or other communication shall have been directed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide to the Company.

(b) If to the Company to

Nauticus Robotics, Inc.  
17146 Feathercraft Lane, Suite 450  
Webster, TX 77598  
Attention: Legal Department  
Email: legal@nautic.us

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

Winston & Strawn LLP  
800 Capitol Street, Suite 2400  
Houston, Texas 77002  
Attn: Michael J. Blankenship  
Email: MBlankenship@winston.com

or to any other address as may have been furnished to Indemnitee by the Company.

Section 24. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 25. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Court of Chancery of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or Proceeding in the Delaware Court and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 26. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 27. Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

**COMPANY**

**NAUTICUS ROBOTICS, INC.**

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

**INDEMNITEE**

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

*[Signature Page to Indemnification Agreement]*

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## Nauticus Robotics to Acquire 3D at Depth in All-Stock Transaction

*Acquisition Strengthens Nauticus' Position in the Digital Evolution of Subsea Services*

**Houston, TX – October 3, 2023** – Nauticus Robotics, Inc. (“Nauticus” or the “Company”) (NASDAQ: KITT), a developer of autonomous vehicles and robots for data collection and intervention services for offshore industries, announced the execution of a definitive agreement to acquire 3D at Depth, Inc. (“3D”), a global leader in commercial subsea laser LiDAR (Light Detection and Range) inspection and data services, for approximately \$34 million in stock, before certain purchase price adjustments and the assumption of debt.

This strategic acquisition enhances Nauticus’ full spectrum of autonomous underwater maritime capabilities, including integrated sensor solutions and data collection and analysis. It expands market reach and increases the value and utilization of Nauticus’ Fleet assets.

“The future of subsea services lies in autonomy, data gathering, and analytics,” said Nicolaus Radford, Nauticus’ Founder and CEO. “LiDAR has long since been core to terrestrial autonomy and by adding 3D’s capabilities to the Nauticus Fleet, we enhance autonomous vehicles in the offshore market. This acquisition increases the value of Nauticus’ fleet services and positions the Company to capitalize on data acquisition and analytics for subsea operations.”

### Compelling Strategic and Financial Benefits

- **Accelerates commercial market penetration:** Nauticus expects to capitalize on existing Master Service Agreements and contracts to shorten sales cycles, providing compelling growth and cross-selling opportunities. 3D has broad customer relationships, including several companies in Nauticus’ sales pipeline.
- **Broadens IP portfolio:** Nauticus will assume 11 patents for a leading position in underwater optical measurements and inspection, with an additional 19 pending. This portfolio bolsters the Company’s existing Intellectual Property for subsea robotics and autonomy.
- **Expands target market:** Nauticus expects to benefit from growing usage of 3D’s laser LiDAR by 3<sup>rd</sup> party operators in the industry, accessing a larger part of the offshore market. The laser LiDAR service also integrates into the Nauticus Fleet, enhancing unit economics.
- **Established operational expertise:** As Nauticus scales up domestic and international offshore service operations in 2024, 3D’s experience from delivering more than 850 commercial projects across six continents will complement Nauticus’ existing offshore expertise.
- **Accretive to per share metrics:** The transaction is expected to be accretive to Nauticus’ 2024 revenue per share, earnings per share, and cash flow per share. During 2022, 3D generated \$9.8 million of revenue with a gross profit margin in excess of 60%, and it is on track to grow revenue by more than 20% in 2023.

“In addition to the compelling strategic and financial benefits of this deal, the acquisition will add momentum to our commercial growth trajectory,” Radford continued. “By adding 3D’s technology, offshore inspection and data service, and experienced team, Nauticus expands our addressable market and accelerates our customer penetration in the offshore energy and renewables industries.”

Founded in 2009, 3D is a pioneer in the world of underwater laser LiDAR technology. The company’s technology and service allow customers to map, monitor, and evaluate submerged assets, providing benefits through increased project efficiencies, reduced operational costs, and total asset and environmental awareness.

“The Nauticus Robotics and 3D at Depth combination creates a compelling solution for the subsea market and should help improve our products and services for all our clients,” said Carl Embry, founder and CEO of 3D at Depth. “We believe the integration of our unique subsea multi-dimensional data collection and processing with an emerging leader in subsea robotics creates a differentiated offering for customers seeking safer, cleaner, lower-cost subsea services.”

### **Transaction Details**

Under the terms and subject to the conditions of the acquisition agreement, 3D security holders will receive approximately 9.9326 shares of Nauticus common stock for each share of 3D common stock equivalent they own, for an aggregate equity value of approximately \$34 million, before purchase price adjustments. Nauticus will also assume approximately \$4.1 million of debt in the transaction. The transaction is expected to close during the fourth quarter of 2023. Upon closing of the transaction, 3D will operate as a division of Nauticus.

The boards of both companies have unanimously approved the transaction, which is subject to customary closing conditions, including the approval of Nauticus' and 3D's respective stockholders.

Mast Capital Advisors is acting as the exclusive financial advisor to Nauticus and Winston & Strawn LLP is serving as legal counsel to Nauticus in connection with the transaction. Sparkstone Capital Advisors is acting as the exclusive financial advisor to 3D, with BoyarMiller and Hutchinson Black and Cook, LLC serving as legal counsel to 3D.

### **About Nauticus**

Nauticus Robotics, Inc. is a developer of autonomous robots for data collection and intervention services for the ocean industries. Nauticus' robotic systems and services are delivered to commercial and government-facing customers through a Robotics-as-a-Service (RaaS) business model and direct product sales for both hardware platforms and software licenses. Besides a standalone service offering and products, Nauticus' approach to ocean robotics has also resulted in the development of a range of technology products for retrofitting/upgrading legacy systems and other third-party vehicle platforms. Nauticus provides customers with the necessary data collection, analytics and subsea manipulation capabilities to support and maintain assets while reducing their operational footprint, operating cost and greenhouse gas emissions to improve offshore health, safety and environmental exposure.

### **About 3D at Depth**

3D at Depth is a leader in advanced subsea laser LiDAR technology. Its advanced Subsea LiDAR laser (SL) systems and subsea survey services enable clients to extract more value from underwater 3D data. Through advanced data collection, processing, visualization and analysis, 3D at Depth provides accurate, repeatable, millimetric 3D point clouds to help measure, map and evaluate underwater assets and environments. 3D supports customer survey operations globally from its bases in Europe and the United States.

## **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which are intended to enjoy the protection of the safe harbor for forward-looking statements provided by the Exchange Act as well as protections afforded by other federal securities laws. Generally, statements that are not historical facts, including statements concerning possible or assumed future actions, business strategies, events or results of operations, are forward-looking statements. These forward-looking statements may be identified by the use of words such as "believes," "estimates," "expects," "projects," "forecasts," "may," "will," "should," "seeks," "plans," "scheduled," "anticipates," "intends" or "continue" or similar expressions that predict or indicate future events, results or trends or that are not statements of historical matters, although not all forward-looking statements contain such identifying words. There can be no assurance that the events, results or trends identified in these forward-looking statements will occur or be achieved. Forward-looking statements inherently involve risks and uncertainties that may cause actual events, results or performance to differ materially from those indicated by such statements. These forward-looking statements are based on Nauticus' and 3D's management's current expectations and beliefs, as well as a number of assumptions concerning future events. While Nauticus and 3D consider these expectations, beliefs and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory and other risks and uncertainties, many of which are difficult to predict and beyond Nauticus' and 3D's control and which include, but are not limited to: the ability of Nauticus and 3D to consummate the proposed transactions contemplated by acquisition agreement (the "Transactions") within the anticipated timeframe or at all; the satisfaction or waiver, as applicable, of conditions to closing the Transactions, including, without limitation, obtaining the necessary regulatory and other consents and approvals, including the requisite approvals the Transactions by Nauticus' and 3D's respective stockholders; the ability to realize the anticipated benefits of the Transactions; the successful integration of 3D's business and products with those of Nauticus; any disruption by reason of the Transactions of Nauticus' current business, plans or operations; the effect of the announcement or pendency of the Transactions on the market price of Nauticus' publicly traded securities, operating results or ability to establish or maintain relationships with employees, suppliers or other business partners; significant transaction costs; unknown liabilities; future exchange and interest rates; changes in tax and other laws, regulations, rates or policies; future business combinations, divestitures or other strategic transactions; the expected timing of product commercialization or new product releases; customer interest in Nauticus' and 3D's products and services; estimated operating results; anticipated cash and other capital expenditures and needs; and other risks and uncertainties described in the Company's filings with the Securities and Exchange Commission (the "SEC"), including, without limitation, the risks and uncertainties described in the sections entitled "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, or in the Company's subsequently filed Quarterly Reports on Form 10-Q. Forward-looking statements speak only as of the date they are made, and neither Nauticus nor 3D is not under any obligation, and expressly disclaims any obligation, to update, alter or otherwise revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by law. Readers should carefully review the statements set forth in Nauticus' reports and other filings with the SEC for a more complete discussion of the risks and uncertainties facing the Company, any of which could cause actual outcomes to be materially different from those indicated in the forward-looking statements made by the Company, in particular the sections entitled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" (or similarly titled sections) in documents filed by the Company from time to time with the SEC, including Nauticus' Quarterly Report on Form 10-Q filed with the SEC on August 14, 2023. Should one or more of these risks, uncertainties or other factors materialize, or should assumptions underlying the forward-looking statements prove incorrect, actual results may vary materially from those described herein as intended, planned, anticipated, believed, estimated or expected. The documents filed by Nauticus with the SEC may be obtained free of charge at the SEC's website at [www.sec.gov](http://www.sec.gov).

## **No Offer or Solicitation**

This press release is for information purposes only and is not intended to and shall not constitute a solicitation of a proxy, vote, consent, approval or authorization with respect to any securities or in respect of the Transactions, or an offer to sell or the solicitation of an offer to buy or a recommendation to purchase any securities, nor shall there be any sale of securities in any jurisdiction in which any such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction or otherwise in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended, or an exemption therefrom, and otherwise in accordance with applicable law.



### **Important Additional Information To Be Filed with the SEC**

In connection with the Transactions, Nauticus intends to file with the SEC a registration statement on Form S-4 that will include a proxy statement and prospectus (the "Proxy Statement/Prospectus"), copies of which, if and once definitive/final, will be mailed or otherwise made available to Nauticus' stockholders as of the record date to be established for voting on the Transactions. This press release is not a substitute for the Proxy Statement/Prospectus or any other document that Nauticus will distribute or otherwise make available to its stockholders in connection with the Transactions. **Nauticus' stockholders and other interested persons are advised to read, once available, the preliminary Proxy Statement/Prospectus and any amendments thereto and, once available, the definitive/final Proxy Statement/Prospectus, as well as all other relevant materials filed or that will be filed with the SEC, as these documents will contain important information about Nauticus, 3D and the Transactions.** Stockholders may also obtain copies of the preliminary Proxy Statement/Prospectus, the definitive/final Proxy Statement/Prospectus, once available, as well as other documents filed by the Company with the SEC, without charge, at the SEC's website at [www.sec.gov](http://www.sec.gov), or through the Company's website at [ir.nauticusrobotics.com](http://ir.nauticusrobotics.com).

### **Participants in the Solicitation**

Nauticus and 3D and their respective directors and executive officers may be deemed participants in the solicitation of proxies from Nauticus' stockholders in connection with the Transactions. Information regarding the persons who, under the rules of the SEC, may be deemed participants in the solicitation of the Company's stockholders in connection with the Transactions, including a description of their respective direct and indirect interests, by security holdings or otherwise, will be set forth in the Proxy Statement/Prospectus to be filed with the SEC. You can find more information about Nauticus' directors and executive officers in the Company's filings with the SEC. You may obtain free copies of these documents as described in the preceding paragraph. Stockholders, potential investors and other interested persons should read the Proxy Statement/Prospectus carefully before making any voting or investment decisions.

### **Non-GAAP Financial Measures**

This press release may include certain financial measures not presented in accordance with accounting principles generally accepted in the United States ("GAAP"). Nauticus believes that the use of these non-GAAP financial measures provides an additional tool for investors to use in evaluating ongoing results and trends. Such non-GAAP financial measures may be different from similarly titled or other non-GAAP financial measures used by other companies. These non-GAAP measures should not be considered in isolation from, or as an alternative to, financial measures prepared in accordance with GAAP. Reconciliations of forward-looking non-GAAP financial measures to comparable GAAP financial measures are not provided as they are not determinable without unreasonable efforts due to the inherent difficulty in forecasting and quantifying certain amounts that would be necessary for such reconciliations, which amounts could have a significant impact on the Company's future financial results, including such non-GAAP financial measures and the comparable GAAP financial measures.



**Investor Relations Contact:**

Ralf Esper  
Gateway Group, Inc.  
(949) 574-3860  
KITT@Gateway-grp.com

**Media Contact:**

Zach Kadletz  
Gateway Group, Inc.  
(949) 574-3860  
KITT@Gateway-grp.com