As filed with the Securities and Exchange Commission on December 22, 2020
Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AGRIFY CORPORATION

(Exact name of registrant as specified in its charter)

Nevada	**8742**	**30-0943453**
(State or other jurisdiction of incorporation or organization)	(Primary standard industrial classification code number)	(I.R.S. employer identification number)

101 Middlesex Turnpike
Suite 6, PMB 326
Burlington, MA 01803
(617) 896-5243
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Raymond Chang, Chief Executive Officer
Agrify Corporation
101 Middlesex Turnpike
Suite 6, PMB 326
Burlington, MA 01803
(617) 896-5243
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. £

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. £

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. £

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. £

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer £	Accelerated filer £
Non-accelerated filer £	Smaller reporting company S
(Do not check if smaller reporting company)	Emerging growth company S

CALCULATION OF REGISTRATION FEE

Title of Each Class of Security Being Registered	Proposed Maximum Aggregate Offering Price[(1)(2)]	Amount of Registration Fee[(3)]
Common stock, $0.001 par value	$ 25,000,000	$ 2,727.50
Representative's warrants to purchase common stock[(4)]		
Common stock underlying Representative's warrants[(5)]		
Total	$ 25,000,000	$ 2,727.50

(1) Includes common stock that may be issued upon exercise of a 45-day option granted to the underwriters to cover over-allotments, if any.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(3) Paid herewith. Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

(4) In accordance with Rule 457(g) under the Securities Act, because the shares of the registrant's shares of common stock underlying the representative's warrants are registered hereby, no separate registration fee is required with respect to the warrants registered hereby.

(5) As estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. The warrants issued to the representative of the underwriters are exercisable at a per share exercise price equal to 110% of the public offering price. As estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(g) under the Securities Act, the proposed maximum aggregate offering price of the representative's warrant is $[_____] (which is equal to 5% of $[_____]).

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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PRELIMINARY PROSPECTUS **SUBJECT TO COMPLETION, DATED DECEMBER 22, 2020**

_____ Shares

Common Stock

AGRIFY™

Developer of Premium Indoor Grow Solutions

This is the initial public offering of Agrify Corporation. No public market currently exists for our common stock. We are offering shares of our common stock and anticipate the initial public offering price will be between $ and $ per share.

We have applied to have our shares of common stock approved for listing on the NASDAQ Capital Market (or NASDAQ) under the symbol "AGFY." We will not proceed with this offering in the event our common stock is not approved for listing on NASDAQ.

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 and, as such, may elect to comply with certain reduced reporting requirements after this offering. See "Prospectus Summary — Emerging Growth Company Status."

Investing in our securities is speculative and involves a high degree of risk. You should carefully consider the risk factors beginning on page 17 of this prospectus before purchasing shares of our common stock.

	Price to Public	Underwriting Discounts and Commissions[1]	Proceeds to Us
Per Share	$	$	$
Total	$	$	$

_____

(1) In addition to the underwriting discount of 8.0% of the public offering price (which does not take into account an underwriting discount of 3.5% of the public offering price as applied to shares sold to certain investors), we have agreed to issue warrants to purchase shares of common stock to the underwriters and reimburse the underwriters for certain expenses in connection with this offering. See "Underwriting" for additional information regarding total underwriting compensation, including information on underwriting discounts.

We have granted the representative of the underwriters the right to purchase an additional _____ shares of our common stock to cover over-allotments.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2021.

Joint Book-Running Managers

Maxim Group LLC **Roth Capital Partners**

The date of this prospectus is , 2021

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You should rely only on the information contained in this prospectus and in any free writing prospectus. We and the underwriters have not authorized anyone to provide you with information different from that contained in this prospectus. We and the underwriters are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our common stock.

Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

PROSPECTUS SUMMARY

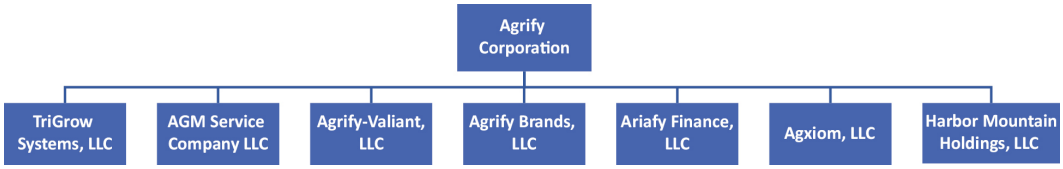
This summary highlights certain information appearing elsewhere in this prospectus. For a more complete understanding of this offering, you should read the entire prospectus carefully, including the information under "Risk Factors," "Business" and our financial statements and the related notes included elsewhere in this prospectus before investing in our common stock.

In this prospectus, unless otherwise stated or the context otherwise requires, references to "Agrify, "Company," "we," "us," "our," or similar references mean Agrify Corporation and its subsidiaries on a consolidated basis.

On [•], 2021, we implemented one-for-[•] reverse stock split of our outstanding common stock. Unless the context expressly dictates otherwise, all references to share and per share amounts referred to herein reflect the reverse stock split.

Corporate Structure

We were incorporated on June 6, 2016 in the State of Nevada as Agrinamics, Inc. and subsequently changed our name to Agrify Corporation on September 16, 2019. The following diagram represents our corporate structure and the entities that we consolidate:



ASC 810-10-25-38, "Consolidation of Variable Interest Entities" requires a variable interest entity ("VIE") to be consolidated by a company if that company absorbs a majority of the VIE's expected losses and/or receives a majority of the entity's expected residual returns as a result of holding variable interests. Agrify Valiant LLC and Agrify Brands, LLC are VIEs as defined by ASC 810-10-25-38. While we own 60% of Agrify Valiant LLC's equity interests and 75% of Agrify Brands, LLC's equity interests, the remaining equity interests in Agrify Valiant LLC and Agrify Brands, LLC are owned by unrelated third parties, and the agreement with these third parties provides us with greater voting rights. Accordingly, we consolidate the financial statements of Agrify Valiant LLC and Agrify Brands, LLC under the VIE rules and reflects the third parties' interests in the consolidated financial statements as a non-controlling interest. Agrify Valiant LLC was formed to expand our product offering to include various facility build-out, design, engineering and consulting services. We received Agrify Brands, LLC as part of the acquisition of TriGrow Systems, Inc. TriGrow Brands, LLC is a licensor of an established portfolio of consumer brands that utilize our grow technology. In addition, we hold 50% of the right to Teejan Podponics International LLC ("TPI") since December 2018. TPI is treated as an equity investment as we cannot exercise significant influence.

Our principal address is 101 Middlesex Turnpike, Suite 6, PMB 326, Burlington, MA 01803. Our telephone number is (617) 896-5243. We maintain a website at *www.agrify.com*. The information contained on our website is not, and should not be interpreted to be, a part of this prospectus.

Overview

We are a developer of highly advanced and proprietary precision hardware and software grow solutions for the indoor agriculture marketplace. We believe we are the only company with an automated and fully integrated grow solution in the indoor agriculture industry. We also believe our *Agrify "Precision Elevated™"* cultivation solution is vastly differentiated from anything else on the market in that it combines our seamlessly integrated hardware and software offerings with a wide range of associated services such as consulting, engineering, and construction to form what we believe is the most complete solution available from a single provider. The totality of our product mix and service capabilities form an integrated ecosystem in what has historically been an extremely fragmented market for the various components needed for indoor agriculture. As a result, we believe we are well situated to create a dominant market position in the indoor agriculture sector.

Despite the fact that the indoor agriculture space is rapidly growing, our grower customers face some significant obstacles to their operations (such as lack of standard operating procedures, poor ventilation and air circulation, disease and pest mitigation and unutilized vertical space) that pose a serious threat to their long-term profitability. We believe that our turnkey, fully integrated Agrify "Precision Elevated™" cultivation solution is the key to resolving many of the challenges our customers encounter. With years of indoor agriculture industry experience and extensive domain expertise, our team is able to work closely with cultivators across various commercial segments including fruits, vegetables, hemp and cannabis. While we do not cultivate, come in contact with, distribute or dispense cannabis or any cannabis derivatives that are currently prohibited under United States federal law, our cultivation solutions can be used within indoor grow facilities by cannabis cultivators.

Not only do we provide our valued customers with the tangible benefit of working with a single provider in what has historically been a decentralized market full of piecemeal solutions that were not necessarily designed and engineered to work harmoniously with one another, we have also elevated the entire indoor growing experience. Through our cutting-edge grow solutions, we believe we give our customers the tools they need to operate their facilities with more precision, consistency and increased yields while helping them achieve higher returns on investments in equipment such as ours. Our goal is always to enable our customers to consistently produce the highest quality products at the lowest cost possible.

We have generated significant momentum in the U.S. market with our proprietary Agrify "Precision Elevated™" cultivation solution, which is the result of extensive research and development, and we expect to have significant expansion opportunities over time both domestically and globally. We have set ourselves apart by bringing to market a technologically savvy, bundled solution of equipment, software and services that is turnkey, end-to-end, fully integrated and optimized for precision growing. As we continue to accelerate our growth, we have started taking pre-orders for the newest version of our flagship hardware product, version 3.5 of the *Agrify Vertical Farming Unit (AVFU)*, as well as our proprietary Software as a Service ("SaaS") product *Agrify Insights*™. SaaS (also known as subscribeware or rentware) is a software licensing and delivery model wherein software is licensed on a subscription basis and is centrally hosted.

Our core business model includes substantial equipment sales for the AVFUs as well as recurring SaaS revenues for Agrify Insights™, as our software is licensed by customers through a subscription that allows us to charge monthly fees for its continued use. Additionally, we are able to drive even more revenue and new business through our service offerings and complementary products.

All of our AVFU-related revenue has come from sales of the first three generations of our AVFU, which has substantially similar functionality as the AVFU version 3.5. We have also been selling LED lights, a small amount of environmental threat mitigation products from Bluezone Products, Inc. and Enozo Technologies, Inc. and other grow and ancillary equipment.

We started 2020 with a backlog of $4 million and during the first six months of 2020 we received additional bookings of $32.9 million in the form of purchase orders or purchase commitments. We recognized revenue of $7.7 million during the first nine months of 2020, and expect to recognize revenue of approximately 75% from the remaining backlog of $29.2 million by June 2021 and the rest gradually thereafter. As of October 28, 2020, we have $121 million of carefully vetted potential sales opportunities (which we refer to as our qualified pipeline). Of this, $53 million of qualified pipeline was generated through our company directly and $68 million through our Agrify-Valiant Joint-Venture. We are presently working to convert this pipeline into confirmed bookings over the next 12 months.

We target large scale high-value enterprise sales versus high-volume sales, and we believe that we will be able to significantly scale our business in the coming years without needing to significantly increase our headcount. Additionally, three of our last four purchase orders or purchase commitments (all of which were secured during 2020) have been for between $7.2 million and $11.1 million, and we expect that our average contract size will increase over time as well as we begin to partner with larger facilities that require more equipment and services. We have also recently unveiled new capabilities and partnerships around facility design, engineering, construction, and equipment financing. Ultimately, we are confident that our ability to support our customers with a full range of indoor grow solutions and services should position us to be the provider of choice in the market.

We also believe that the development of stronger business, operational and compliance practices across indoor agriculture in general is inevitable as the sector continues to evolve and mature, making our integrated, turnkey

solution even more attractive to customers. We have witnessed first-hand that indoor agriculture facilities are becoming more sophisticated business enterprises that seek innovative technologies like ours, as well as well-honed business and operational processes, to produce, at scale, high-quality products with consistency that meet the growing demand and needs of end users. Through our Agrify "Precision Elevated™" cultivation solution, our customers gain the ability and huge advantage to create consistent high-quality products with repeatability across all of their operations, wherever located, similar to any other consumer product company such as branded food or drink product companies.

Our Product: the Agrify "Precision Elevated™" Cultivation Solution

Given the significant shortcomings associated with traditional indoor grow methods across all commercial agriculture segments, it was apparent that a new paradigm in indoor cultivation was desperately needed, which is precisely why we are bringing a more modern, manufacturing style approach that is process driven through technology and measured via data and analytics. Overall, our holistic approach to addressing our customers' cultivation needs treats their production facilities as an end-to-end ecosystem whose success depends on all of its components working together optimally.

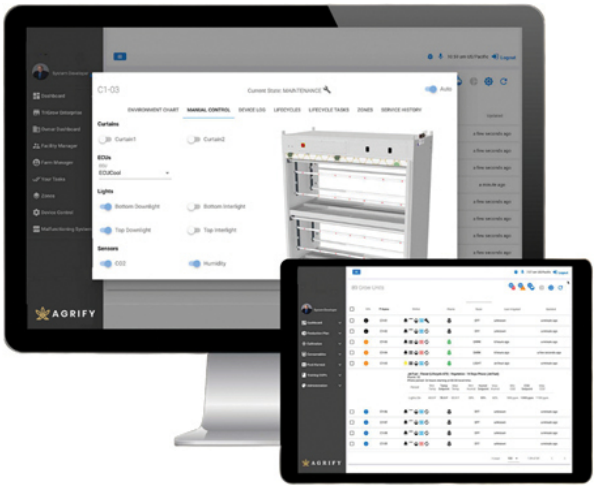
In looking at our product mix, our core offering and the focus of our sales efforts involves bundling our AVFUs with our Agrify Insights™ software. Our integrated hardware and software solution was specifically designed to form a unified system. It is through this synergistic framework that we are able to offer customers the benefits of increased automation, control, precision, and transparency, which are all things they value.

Beyond our core bundled and integrated offering, we have several other products we are actively marketing, such as Agrify Integrated Grow Racks, environmental threat mitigation solutions from Bluezone and Enozo, as well as LED lights specifically designed for horticulture applications. Additionally, we offer various facility build-out, design, engineering and consulting services through our joint venture with Valiant-America, and we have an equipment financing vehicle that assists customers with the buying process. All of these ancillary products and services can be utilized on their own, offering valuable touchpoints to potentially seed relationships and convert them into more lucrative land-and-expand engagements in the future, or they can serve as complements to our core offering to form a novel, fully integrated approach for indoor cultivation.

Our core offerings, which are described in more detail below, are compelling on their own. However, we believe what really sets us apart is our ability to bring to the market a tech-forward, bundled solution of equipment, software and services that is turnkey, end-to-end, fully integrated and optimized for precision growing.

The Agrify Vertical Farming Unit

We believe that our AVFU is the only product on the market that offers a modular, compartmentalized micro-climate growing system for indoor vertical farming. These 8.5 ft. long x 4 ft. wide x 9.3 ft. tall units each have two tiers of growing space. They are designed to line up horizontally in rows, and they can be stacked vertically up to 3 units tall allowing a total of 6 layers of canopy, effectively taking advantage of previously unused indoor vertical space. The AVFU is a premium indoor grow solution with an MSRP starting at $20,000, and our most recent AVFU deals have been for between 60 and 535 units as our new customers become satisfied that our grow solutions will be an instrumental part of their operations moving forward. We are targeting large scale projects that range in size from $1 million to over $10 million in AVFU hardware sales before any additional revenue from our Agrify Insights™ software and ancillary products and services are realized.



Agrify Insights™

A key component of our cultivation solution is our proprietary software, Agrify Insights™, which has been developed in-house. This cloud-based software interfaces with a microservices middleware and relational database that integrates with our hardware and provides our managers, facility owners, facility managers, and growers real-time control and monitoring of facilities, growing conditions, and insights into both production and profit optimization. The combination of precise environmental control and automation with data collection and actionable insights empowers our customers to be more efficient, more productive, and more intelligent about how they run their businesses. We believe that the robust data analytics capabilities from our Agrify Insights™ platform coupled with our AVFU system is enabling our customers to transform their businesses and quality of the product they are cultivating.

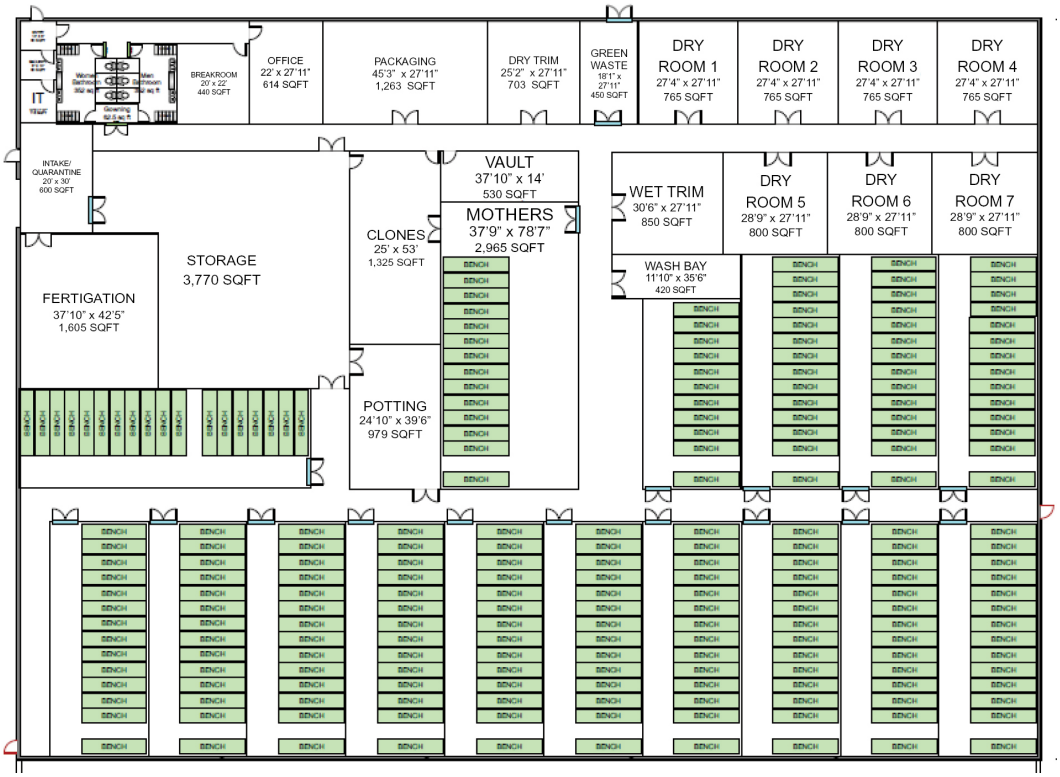
Our business model includes charging customers a monthly recurring SaaS subscription fee per deployed AVFU for access to Agrify Insights™, which ranges from $75 to $200 per AVFU per month depending on the level of functionality and support purchased. This provides us with a predictable recurring revenue stream that has high expected customer retention due to the fact that our Agrify Insights™ software is required to operate our AVFUs, and our customers are deeply committed to using our AVFUs. We believe that most customers will opt for our more robust levels of functionality and support. Consequently, we expect our annual SaaS revenue will be between 8% to 10% of total AVFU order value. While Agrify Insights™ is currently only available to customers who intend to use it in tandem with the AVFUs, we have been receiving considerable interest in our software as a standalone product, and we may revisit the possibility of offering it independently in the future.

Economic Implications of Our Agrify Vertical Farming Unit Cultivation Solution

To further illustrate the benefit of going with the AVFU infrastructure versus a more traditional indoor cultivation setup with conventional LED lights or conventional high pressure sodium (HPS) lights, we have conducted a comparative analysis internally on an actual 45,082 square foot facility.

The first image below is a concept drawing we did showing 752 double stacked AVFUs in this facility. The second image is a concept drawing showing a traditional grow room setup in the exact same facility. The AVFU framework in this particular facility leads to approximately 3x more canopy square footage, which then translates into approximately 4x more estimated annual yield and significantly enhanced revenue opportunities.

Facility with AVFU Setup



Facility with Traditional Grow Room

Set forth below are the illustrative costs and revenue potential for cultivators of three different approaches in what we believe to be our conservative and defensible model*:

	AGRIFY	Conventional LED System	Conventional HPS System
Build-Out Cost			
Estimated Facility Infrastructure & Equipment	$12,622,960 *($280 per sq. ft. x 45,082 sq. ft.)*	$12,397,550 *($275 per sq. ft. x 45,082 sq. ft.)*	$6,762,300 *($150 per sq. ft. x 45,082 sq. ft.)*
Cultivation Equipment	$15,040,000	$4,050,000	$2,025,000
Estimated Total Build-Out Cost	$27,662,960	$16,447,550	$8,787,300
Economic Analysis			
Total Canopy Sq. Ft.	48,128 *(752 VFUs)*	16,200 *(242 Benches)*	16,200 *(242 Benches)*
Estimated Annual Yield / Sq. Ft. (lbs.)	0.609	0.463	0.420
Estimated Total Annual Yield	29,324	7,494	6,804
Estimated Price per lb. (avg. assumption)	$3,000	$3,000	$3,000
Estimated Annual Revenue	$87,973,171	$22,482,360	$20,412,000
Estimated Annual OpEx	$9,589,076 *($327/lb.)*	$3,522,236 *($470/lb.)*	$4,422,600 *($650/lb.)*
Annual Estimated EBITDA	$78,384,096	$18,960,124	$15,989,400
NPV (10 years, 15% discount rate)	$365,728,679	$78,708,923	$71,459,799
Payback Period	4 months	10 months	7 months

* *See "Certain Non-GAAP Financial Measurements and Reconciliation to GAAP" on page 15.*

While the upfront cost is more for the facility that is outfitted in AVFUs, that is quickly offset by the fact that an AVFU outfitted facility has the capacity to generate about 4x the amount of estimated annual revenue and over 4x the annual estimated EBITDA. In looking at the numerical values in the model, it becomes even more compelling when comparing the AVFU facility to a facility with a traditional grow room. Assuming an initial investment of approximately $27.7 million for the AVFU facility build-out, our model indicates that the facility owner would recoup their initial investment and produce significant free cash flow in the first year of operation assuming the facility should be able to achieve almost $88 million of estimated annual revenue and roughly $78.4 million in annual estimated EBITDA. In contrast, the traditional indoor facilities would cost approximately $8.8 million or a little less than $16.5 million to build out depending on which lights are used and would generate approximately $20.4 million or $22.5 million in estimated annual revenue and right around $16 million or just under $19 million in annual estimated EBITDA. When comparing the different facility types on a side-by-side analysis, we believe the AVFU facility is far more attractive than either type of traditional facility given the financial upside is significantly higher, and also the precision elevated approach is a far more sophisticated way to grow crops.

Our Competitive Strengths

We believe our business has, and our future success will be driven by, the following competitive strengths:

- ***Innovative Technology in an Attractive Growing Industry***. Our innovative solutions are aimed at large and growing U.S. domestic and global markets. We believe we are the only provider of a fully integrated end-to-end hardware and software turnkey solution for indoor cultivation facilities that allows customers to produce at scale, high-quality products with consistency that meet the growing demand and needs of end users at a relatively low cost. As such, we believe we have a first mover advantage due to innovating this new type of precision cultivation solution, which is already designed, manufactured and implemented in a number of commercial scale deployments across multiple states within the U.S.

- ***Integrated Proprietary Components.*** We design and create our own hardware, software and standard operating procedures (SOPs) from the ground up, rather than buying piecemeal from third parties. We take a systems-engineered integrated approach that we believe has inherent advantages over other, ad-hoc systems.

- ***Emphasis on Precision and Consistency Through Our Proprietary Grow Solutions.*** While being able to help our customers increase capacity, yield and consequently revenues holds a tremendous amount of value, we believe that our biggest differentiator is our ability to impact the actual quality and consistency of the output by controlling the environment in which the crops are grown and all of the variables that influence harvests with an unparalleled level of precision. The byproduct of our Agrify "Precision Elevated™" cultivation solution is that our customers are able to create consistent high-quality products with repeatability from anywhere similar to any other consumer product company that provides a branded food or drink product.

- ***Market Knowledge and Understanding.*** We have extensive experience with controlled agriculture environments and scale-up manufacturing, as well as industry technical knowledge and relationships. We are keenly aware of the struggles that indoor cultivators face, and we serve as a credible and collaborative partner through the entire customer lifecycle. We believe that our fully integrated turnkey grow solutions and ancillary services are the key to resolving many of the challenges our customers face.

- ***Differentiated Business Model.*** Unlike many of our competitors, we offer a diversified mix of hardware, software and services, which leads to multiple revenue streams. Given the nature of our deployments, we become deeply embedded in our customers' operations through the sale of our AVFUs, and this puts us in a position where their success is directly tied to our equipment. By generating substantial AVFU hardware sales, we end up forming a large installed user base for future high-margin and stable recurring SaaS revenues via our Agrify Insights™ software.

- ***Strategic Investment from and Deep Integration with Large Asian Manufacturer***. Our shareholder base includes Inventronics Inc., which is based in Hangzhou, Zhejiang, China, and the founder of Inventronics is a member of our board of directors. Inventronics is currently one of the largest companies in the world engaged in the design and manufacture of high efficiency, high reliability and long-life LED drivers, and Inventronics has worked with us to develop our LED lighting technology. Although we are not a party to a definitive agreement that governs our relationship with Inventronics, we believe our

long-term relationship with this large manufacturer will allow us to incorporate the most advanced LED driver technology into our products and gain research and development support for any custom power supply needs we have. It also should lead to a reduction in our manufacturing costs by allowing us to procure competitively priced power electronics, which are critical to the operation of our LED lights and AVFUs. In addition, Inventronics provides access to component suppliers and contract manufacturing located in Asia, which we would be unable to reach directly.

- ***Joint Venture with Experienced Consulting and General Contractor of Industrial Facilities.*** We formed a joint venture with Valiant-America in December 2019 recognizing that it has a particular specialization and expertise in the development of indoor farming facilities. With general contracting, electrical, plumbing and HVAC licenses in Massachusetts, New York, New Jersey, Connecticut, New Hampshire, Rhode Island and Florida, as well as strategic partners in California, Nevada, Colorado and Texas, Valiant-America has developed approximately 2.8 million square feet of indoor cultivation space across 78 projects and 43 clients, including some of the leading multi-state operators. Valiant's qualified professionals possess a deep working knowledge of our grow systems and how to integrate our offerings when developing cultivation facilities. We believe being able to provide a full suite of technology products and services to our customers helps to embed us with these customers and enables us to become mission critical to their operations. Our joint venture with Valiant-America has generated 40.2% (or $3,108,000) in total revenue in the first nine months of 2020.

- ***Novel Equipment Financing Solution.*** Limited access to outside capital is a significant issue for cultivators as it can inhibit growth and cultivation facility expansion. We help solve this problem by offering equipment financing plans for select good credit customers, which we believe further enables us to become a vendor of choice. Qualified customers pay approximately 30%-50% upfront and finance the balance through a two-year payment plan.

- ***Experienced and Proven Management Team.*** Our leadership team has entrepreneurial experience, technical expertise, and a track record of scaling up businesses and operating public companies. Additionally, our team is supported by strong advisors and leading strategic and institutional investors.

Industry Overview

The demand for indoor agriculture has been growing at a rapid pace throughout the world (particularly in our target market in the U.S.), and presents significant opportunities for companies like ours that leverage technology, services and experience to accelerate our growth and capture additional market share. According to an analysis conducted by Research and Markets, the global indoor farming market (excluding cannabis) was valued at $114 billion in 2019, and is projected to reach $139 billion by 2025, representing a compounded annual growth rate, or CAGR, of 3.4%.

There are a variety of factors that have created this major shift toward indoor farming, including unpredictable climate conditions, increased urbanization, and the use of pesticides. Additionally, crops grown in indoor facilities generally attract the highest prices in the market as the ability to control environmental variables typically leads to higher quality production. Furthermore, technology innovations within the broader agriculture industry are enabling the indoor sector of the market to expand. According to MarketsandMarkets™ Indoor Farming Technology Report, the indoor farming technology market was valued at $31 billion in 2019, and is projected to reach $53 billion by 2025, representing a CAGR of 9.65%.

Indoor farms grow a wide variety of crops including leafy greens, tomatoes, cannabis, hemp, flowers, microgreens and herbs. These crops have historically been good crops to grow indoors because they generate high revenues and/or have quick growth cycles. These attributes help offset the fact that it can be costly to operate an indoor facility. Even with these dynamics, we believe that our products and solutions mix can significantly push down our customers' typical operating expenses (or OpEx) over time. One of the biggest advantages of indoor farming is its higher predictability and yield potential when compared with conventional farming. By working with enclosed and controlled facilities, farmers no longer need to contend with harsh environmental conditions, so they can grow a crop from seed to harvest in less time, realize higher yields in each cycle, and repeat the harvest more times in a given year.

One popular branch of indoor agriculture involves vertical farming. According to Allied Market Research, the global vertical farming market size was valued at $2.23 billion in 2018, and is projected to reach $12.77 billion by 2026, representing a CAGR of 24.6% from 2019 to 2026. Global Market Insights is even more bullish on this sector as they are expecting the global vertical farming market to experience a massive CAGR of 27.77% between 2019 and 2026, taking the value from $3.16 billion in 2018 to $22.07 billion by 2026. The demand for vertical farming is expected to increase rapidly due in large part to the rise in popularity of organic food as well as the lessening of legal and regulatory restrictions around cannabis and hemp.

Additional Market Opportunity

While we do not cultivate, come in contact with, distribute or dispense cannabis or any cannabis derivatives that are currently prohibited under U.S. federal law, our cultivation solutions can be used within indoor grow facilities by cannabis cultivators if they choose to do so.

In the U.S., the development and growth of the regulated medical and recreational (adult use) cannabis industry has generally been driven by state law and regulation, and accordingly, the market varies on a state-by-state basis. State laws that legalize and regulate cannabis for medicinal reasons allow patients to consume cannabis with a designated healthcare provider's recommendation, subject to various requirements and limitations. As of the date of this prospectus, 33 states, plus the District of Columbia, have passed laws allowing their citizens to use medical cannabis. On top of this medical condition growth trend, there has been a slower but steady increase in the number of states that have chosen to legalize cannabis for recreational use. As of the date of this prospectus, 11 states, plus the District of Columbia, have passed laws allowing adult recreational use cannabis. Furthermore, every single cannabis initiative on the ballot during the 2020 election passed, which resulted in five more states choosing to legalize cannabis in some capacity. Three of those states decided to begin allowing recreational use, one state voted to legalize medicinal cannabis, and the last state became the first state to legalize both medicinal and recreational cannabis during the same election. Shifting public attitudes and state law and legislative activity are driving this change as indicated by a 2019 poll by Quinnipiac University that found that 93% of Americans support patient access to medical-use cannabis, if recommended by a doctor, which was the same level of support from a similar poll conducted by Quinnipiac University in 2018.

Given that the market size of legal cannabis in the U.S. in 2020 is expected to be $17 billion according to New Frontier, and 53% of cannabis volume is currently grown indoors according to New Leaf Data Services, we estimate that the indoor segment of the legal U.S. cannabis sector is a $9 billion market with the expectation that there will be even more growth on the horizon. In fact, according to a report from April 2020, BDSA, the leading provider of cannabis industry market research, in conjunction with Arcview Market Research, forecasted that U.S. legal cannabis sales will approach $34 billion by 2025, which represents 72% of their projection for total global sales of $47 billion in 2025.

The different cultivation environments for cannabis each have advantages and disadvantages, and this leads to a variance in price points based on quality, actual and perceived, and process. According to New Leaf Data Services' July 10, 2020 U.S. cannabis spot index, the average wholesale price per pound of outdoor grown flower was $904 per pound ($896 per pound the prior week), greenhouse flower averaged $1,216 per pound ($1,215 per pound the prior week), while indoor grown flower averaged $1,778 per pound ($1,777 per pound the prior week) and the total market on average was $1,441 per pound ($1,435 per pound the prior week). Based on the breakdown of production by cultivation environment, indoor grown flower represents 53% of total volume by type while greenhouse and outdoor represent 23% and 24%, respectively. Additionally, based on the breakdown of percentage of observed transactions, indoor grown flower represents 64% of total volume by type while greenhouse and outdoor represent 18% and 18%, respectively.

Our Growth Strategy

We have made it a priority to develop our core bundled hardware and software indoor cultivation solution, and we have augmented that with some strategic acquisitions, partnerships, joint ventures and distribution arrangements that we believe will enable us to scale our business as a highly differentiated leader in the indoor agriculture marketplace. Based on our current standing in the market and our future goals, we have developed a multi-pronged growth strategy to help us capitalize on the sizable opportunity at hand. Through methodical sales and marketing efforts, our joint venture with Valiant-America, scale-up manufacturing, and equipment financing,

we believe we have implemented several key initiatives we can use to grow our business more effectively. We also intend to opportunistically pursue the strategies described below to continue our upward trajectory and enhance shareholder value:

- Adhere to our rigorous sales process and continue to put a strong infrastructure in place to enable revenue growth;
- Align our marketing team with our sales force to maximize our industry visibility and create a robust lead generation engine to drive revenue;
- Leverage our joint venture with Valiant-America, which we believe will give us a credible and complementary channel partner with extensive industry relationships to help us gain additional market share, as a result of having a full turnkey offering with integrated hardware and software products as well as a wide range of associated services such as consulting, engineering, and construction;
- Develop protocols, processes, and partnerships for scale-up manufacturing in order to meet the increasing demand for our grow solutions; and
- Capitalize on our equipment financing program, which we believe is novel in the indoor agriculture space, and is an instrumental factor in removing certain points of friction from the sales cycle and may tip the scales in our favor with certain prospects.

Summary Risk Factors

Our business is subject to a number of risks and uncertainties that you should understand before making an investment decision. These risks are discussed more fully in the section entitled “Risk Factors” following this prospectus summary. These include:

- we have a history of losses and we expect significant increases in our costs and expenses to result in continuing losses for at least the foreseeable future, and as a result, our management has identified and our auditors agreed that there is a substantial doubt about our ability to continue as a going concern;
- our limited operating history makes evaluating our business and future prospects difficult, and may increase the risk of your investment;
- our limited capital resources will require us to raise additional capital even after this offering, which could result in substantial dilution or significant debt service obligations;
- the COVID-19 pandemic and the efforts to mitigate its impact may have an adverse effect on our business, liquidity, results of operations, financial condition and price of our securities;
- as a company with clients operating in the cannabis industry, we face many particular and evolving risks associated with that industry;
- our concentration of customers exposes us to risks associated with the potential loss of one or more of these significant customers which could adversely affect our financial results;
- our reliance on a limited base of suppliers on certain of our products may result in disruptions to our supply chain and business and adversely affect our financial results;
- our long-term results of operations are difficult to predict and depend on the commercial success of our clients, the continued growth of the cannabis industry generally and the regulatory environment within which the cannabis industry operates;
- we face intense competition that could prohibit us from developing or increasing our customer base;
- the growth and success of our business depends on the continued contributions of Raymond Chang, as our key executive officer, as well as our ability to attract and retain qualified personnel; and
- our success depends in part on our ability to protect our core technology and intellectual property.

Implications of Being an Emerging Growth Company and Smaller Reporting Company

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, which we refer to as the JOBS Act. As a result, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements that are applicable to other companies that are not emerging growth companies. Accordingly, we have included detailed compensation information for only our three most highly compensated executive officers and have not included a compensation discussion and analysis, or CD&A, of our executive compensation programs in this prospectus. In addition, for so long as we are an "emerging growth company," we will not be required to:

- engage an auditor to report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes–Oxley Act of 2002, or the Sarbanes–Oxley Act;
- comply with any requirement that may be adopted by the Public Company Accounting Oversight Board, or the PCAOB, regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (i.e., an auditor discussion and analysis);
- submit certain executive compensation matters to shareholder advisory votes, such as "say-on-pay," "say-on-frequency," and "say-on-golden parachutes;" or
- disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparison of the chief executive officer's compensation to median employee compensation.

In addition, the JOBS Act provides that an "emerging growth company" can use the extended transition period for complying with new or revised accounting standards.

We will remain an "emerging growth company" until the earliest to occur of:

- our reporting $1 billion or more in annual gross revenues;
- our issuance, in a three-year period, of more than $1 billion in non-convertible debt;
- the end of the fiscal year in which the market value of our common stock held by non-affiliates exceeds $700 million on the last business day of our second fiscal quarter; and
- [_____], 2025.

We cannot predict if investors will find our securities less attractive because we may rely on these exemptions, which could result in a less active trading market for our securities and increased volatility in the price of our securities.

Finally, we are a "smaller reporting company" (and may continue to qualify as such even after we no longer qualify as an emerging growth company) and accordingly may provide less public disclosure than larger public companies, including the inclusion of only two years of audited financial statements and only two years of management's discussion and analysis of financial condition and results of operations disclosure. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

THE OFFERING

Common stock being offered by us	shares
Common stock to be outstanding immediately after this offering[(1)]	shares
Over-allotment option	We have granted Maxim Group LLC, the representative of the underwriters (or Maxim Group) an option to purchase up to [•] additional shares of common stock from us at the public offering price less the underwriting discount within 45 days from the date of this prospectus to cover over-allotments.
Use of proceeds	We intend to use the net proceeds from this offering for research and development for future generations of our products and software, sales and marketing activities, hiring of additional personnel, our equipment financing plan to provide limited credit to our customers and working capital and other general corporate purposes. See "Use of Proceeds."
Representative's warrants:	Upon the closing of this offering, we will issue to Maxim Group compensation warrants (or the Representative's Warrants) entitling Maxim Group to purchase 5% of the aggregate number of shares of common stock issued in this offering, excluding shares issued pursuant to the exercise of the over-allotment option, at an exercise price of $[•] per share (which is equal to 110% of the public offering price). The Representative's Warrants will be subject to a lock-up for 180 days from the effective date of the registration statement related to this offering and will be exercisable commencing 6 months after the effective date, terminate on the five year anniversary of the effective date and will contain a customary "cashless exercise" customary "piggyback" registration rights.
Proposed NASDAQ trading symbol	We have applied to have our shares of common stock approved for listing on the NASDAQ under the symbol "AGFY." We will not proceed with this offering in the event our common stock is not approved for listing on NASDAQ.
Lock-up	We and our directors, officers and holders of one percent (1%) or more of our outstanding shares of common stock as of the effective date of the registration statement related to this offering (and all holders of securities exercisable for or convertible into shares of common stock) shall enter into customary "lock-up" agreements pursuant to which such persons and entities shall agree not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any of our securities for a period of 180 days after the effective date of this registration statement.
Risk factors	**The securities offered by this prospectus are speculative and involve a high degree of risk**. Investors purchasing securities should not purchase the securities unless they can afford the loss of their entire investment. See "Risk Factors" beginning on page 17.

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(1) The number of shares of our common stock to be outstanding immediately after this offering excludes:

- 4,951,085 shares of common stock issuable upon the weighted exercise of outstanding options at a weighted average exercise price of $2.21 per share;
- 1,250,000 shares of common stock issuable upon the exercise of outstanding warrants associated with our 2020 convertible promissory notes at a weighted average exercise price of $0.01 per share;
- 355,998 shares reserved for issuance under our equity incentive plan; and
- [ ] shares of common stock underlying the Representative's Warrants.

Unless otherwise stated, all information in this prospectus assumes:

- the conversion of our outstanding shares of Series A Preferred Stock into _____ shares of common stock immediately prior to the closing of this offering based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock

immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%;

- the conversion of our outstanding promissory notes into _____ shares of common stock immediately prior to the closing of this offering based on a conversion formula equal to the quotient of (i) the outstanding principal amount of the promissory notes together with all accrued and unpaid interest hereunder immediately prior to the closing of this offering divided by (ii) the price equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%;
- no exercise of the underwriters' over-allotment option to purchase additional shares; and
- no exercise of the Representative's Warrants.

SUMMARY FINANCIAL AND OTHER DATA

The following table presents our summary historical financial data for the periods presented and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and notes thereto included elsewhere in this prospectus. The statements of operations data for the fiscal years ended December 31, 2019 and 2018 are derived from our audited financial statements included elsewhere in this prospectus. The summary consolidated statements of operations data for the nine months ended September 30, 2020 and 2019 and the consolidated balance sheet data as of September 30, 2020 have been derived from our unaudited interim consolidated financial statements included elsewhere in this prospectus.

	Year Ended December 31,		Nine Months Ended September 30,	
	2019	2018	2020	2019
			(unaudited)	(unaudited)
Statements of Operations Data:				
Revenue, net	$ 4,088,000	$ 1,769,000	$ 7,734,000	$ 2,425,000
Cost of goods sold	4,333,000	1,547,000	6,874,000	2,716,000
Operating expenses	2,846,000	1,238,000	9,332,000	907,000
Loss from operations	(3,091,000)	(1,016,000)	(8,472,000)	(1,198,000)
Miscellaneous income (expense), net	49,000	2,000	(139,000)	(3,000)
Net loss before non-controlling interest	(3,042,000)	(1,014,000)	(8,611,000)	(1,201,000)
Loss attributable to non-controlling interest	—	—	49,000	—
Net loss	(3,042,000)	(1,014,000)	(8,562,000)	(1,201,000)
Net income (loss) per share, basic and diluted				

	As of December 31, 2019	As of September 30, 2020
		(unaudited)
Balance Sheet Data:		
Cash	$ 206,000	$ 4,958,000
Total assets	3,227,000	13,490,000
Total current liabilities	4,032,000	8,206,000
Total liabilities	4,032,000	9,098,000
Total stockholders' equity (deficit)	(805,000)	4,194,000

Certain Non-GAAP EBITDA and adjusted EBITDA Financial Measurements and Reconciliation to GAAP

The following non-GAAP EBITDA and adjusted EBITDA (defined below) financial measures are intended to supplement the GAAP financial information by providing additional insight regarding results of operations of our company. The non-GAAP EBITDA and adjusted EBITDA financial measures used by our company are intended to provide an enhanced understanding of our underlying operational measures to manage our company's business, to evaluate performance compared to prior periods and the marketplace, and to establish operational goals. Certain items are excluded from these non-GAAP financial measures to provide additional comparability measures from period to period. Specifically, the table below presents the non-GAAP financial measure "EBITDA" (defined as earnings before interest, taxes, depreciation, amortization) and "Adjusted EBITDA" (defined as earnings before interest, taxes, depreciation, amortization adjusted for stock-based compensation and other one-time transaction costs such as mergers and acquisitions, financings and other extraordinary items), respectively. EBITDA and Adjusted EBITDA are intended as supplemental measures of our performance that are not required by or presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"). We believe that EBITDA and Adjusted EBITDA provides useful information to management and investors regarding certain financial and business trends relating to our financial condition and operating results.

We believe that the use of EBITDA and Adjusted EBITDA provide additional tools for investors to use in evaluating ongoing operating results and trends and in comparing our financial measures with other businesses which may present similar non-GAAP financial measures to investors. We believe that EBITDA and Adjusted EBITDA are useful measures because they normalize operating results by excluding non-recurring gains, losses and other items and help to demonstrate how much cash we are able to generate annually. In addition, you should be aware when evaluating EBITDA and Adjusted EBITDA that in the future we may incur expenses similar to those excluded when calculating these measures. Our presentation of these measures should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Our computation of EBITDA and Adjusted EBITDA may not be comparable to other similarly titled measures computed by other companies, because all companies do not calculate EBITDA and Adjusted EBITDA in the same fashion.

Our management does not consider EBITDA and Adjusted EBITDA in isolation or as an alternative to financial measures determined in accordance with GAAP. The principal limitations of EBITDA and Adjusted EBITDA are that they exclude significant expenses and income that are required by GAAP to be recorded in our financial statements. Some of these limitations are:

a. EBITDA and Adjusted EBITDA do not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;

b. EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;

c. EBITDA and Adjusted EBITDA do not reflect interest expense, or the cash requirements necessary to service interest or principal payments, on our debts;

d. although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA and Adjusted EBITDA do not reflect any cash requirements for such replacements;

e. EBITDA and Adjusted EBITDA do not reflect the impact of certain cash charges resulting from matters we consider not to be indicative of our ongoing operations; and

f. other companies in our industry may calculate EBITDA and Adjusted EBITDA differently than we do, limiting its usefulness as a comparative measure.

Because of these limitations, EBITDA and Adjusted EBITDA should not be considered in isolation or as a substitute for performance measures calculated in accordance with GAAP. We compensate for these limitations by relying primarily on our GAAP results and using EBITDA and Adjusted EBITDA only as supplements. You should review the reconciliation of net income to EBITDA and Adjusted EBITDA below and not rely on any single financial measure to evaluate our business.

Reconciliation of Non-GAAP Financial Measures
(unaudited)

	Nine Months Ended September 30,	
	2020	**2019**
Net income (loss) from continuing operations	$ (8,562,000)	$ (1,201,000)
Depreciation and amortization	261,000	—
Interest expense	139,000	—
EBITDA from continuing operations	(8,162,000)	(1,201,000)
Stock-based compensation[(1)]	803,000	—
Loss from write-off of and sale of fixed assets[(2)]	846,000	—
Transaction costs[(3)]	936,000	—
Adjusted EBITDA from continuing operations	(5,577,000)	(1,201,000)

_____

(1) Reflects the aggregate grant date fair value of stock options granted during the relevant fiscal year calculated in accordance with FASB ASC Topic 718 ("Compensation — Stock Compensation").

(2) Reflects expenses of $739,000 in connection with development of hardware solution for deployment of rapid grow solution, and $107,000 expenses related to discarded research and development center in Colorado and loss from sale of fixed assets.

(3) Reflects total of $856,000 related to our effort to become publicly listed and $80,000 in legal costs associated with our merger and acquisition activity.

RISK FACTORS

Investing in our common stock is highly speculative and involves a significant degree of risk. You should carefully consider the risks described below and elsewhere in this report, which could materially and adversely affect our business, results of operations or financial condition. Our business faces significant risks and the risks described below may not be the only risks we face. Additional risks not presently known to us or that we currently believe are immaterial may materially affect our business, results of operations, or financial condition. If any of these risks occur, the trading price of our common stock could decline and you may lose all or part of your investment.

Risks Related to Our Business and Industry

We have a history of losses, expect to continue to incur losses in the near term and may not achieve or sustain profitability in the future. As a result, our management has identified and our auditors agreed that there is a substantial doubt about our ability to continue as a going concern.

We have incurred significant losses in each fiscal year since our inception in 2016. We have experienced net losses of approximately $3 million and $1 million for the years ended December 31, 2019 and 2018, respectively. We expect our OpEx, to increase in the future due to expected increased sales and marketing expenses, operational costs, product development costs, and general and administrative costs and, therefore, our operating losses will continue or even increase at least through the near term. In addition, upon consummation of this offering, we will incur significant legal, accounting and other expenses as a public company that we did not incur as a private company. Furthermore, to the extent that we are successful in increasing our customer base, we will also incur increased expenses because costs associated with generating and supporting customer agreements are generally incurred up front, while revenue is generally recognized ratably over the term of the agreement. You should not rely upon our recent revenue growth as indicative of future performance. We may not reach profitability in the near future or at any specific time in the future. If and when our operations do become profitable, we may not sustain profitability.

As a result of these net losses and other factors that we identified, our independent auditors issued an audit opinion with respect to our consolidated financial statements for the year ended December 31, 2019 that indicated that there is a substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. However, if included, these adjustments would likely reflect a substantial impairment of the carrying amount of our assets and potential contingent liabilities that may arise if we are unable to fulfill various operational commitments. In addition, the value of our securities, including common stock issued in this offering, would be greatly impaired. Our ability to continue as a going concern is dependent upon generating sufficient cash flow from operations and obtaining additional capital and financing, including funds to be raised in this offering. If our ability to generate cash flow from operations is delayed or reduced and we are unable to raise additional funding from other sources, we may be unable to continue in business even if this offering is successful.

We have a relatively short operating history, which makes it difficult to evaluate our business and future prospects.

We have a relatively short operating history, which makes it difficult to evaluate our business and future prospects. We have been in existence since June 2016 and much of our revenue growth has occurred during the first nine months of 2020. We have encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly changing industries, including those related to:

- market acceptance of our current and future products and services;
- changing regulatory environments and costs associated with compliance, particularly as related to our operations in the cannabis sector;
- our ability to compete with other companies offering similar products and services;
- our ability to effectively market our products and services and attract new clients;
- the amount and timing of OpEx, particularly sales and marketing expenses, related to the maintenance and expansion of our business, operations and infrastructure;

- our ability to control costs, including OpEx;
- our ability to manage organic growth and growth fueled by acquisitions;
- public perception and acceptance of cannabis-related products and services generally; and
- general economic conditions and events.

If we do not manage these risks successfully, our business and financial performance will be adversely affected.

We have limited capital resources, and even following this offering we will need to raise additional capital. Such funding, if obtained, could result in substantial dilution or significant debt service obligations. We may not be able to obtain additional capital on commercially reasonable terms in a timely manner, which could adversely affect our liquidity, financial position, and ability to continue operations.

At September 30, 2020, we had a cash balance of approximately $4,958,000 and working capital of approximately $1,994,000. We thus have limited capital resources and require the funds from this offering to continue our business. Even if we are able to raise funding in this offering or substantially increase revenue and reduce OpEx, we will need to raise additional capital. In order to continue operating, we may need to obtain additional financing, either through borrowings, private offerings, public offerings, or some type of business combination, such as a merger, or buyout, and there can be no assurance that we will be successful in such pursuits. We may be unable to acquire the additional funding necessary to continue operating. Accordingly, if we are unable to generate adequate cash from operations, and if we are unable to find sources of funding, it may be necessary for us to sell one or more lines of business or all or a portion of our assets, enter into a business combination, or reduce or eliminate operations. These possibilities, to the extent available, may be on terms that result in significant dilution to our shareholders or that result in our investors losing all of their investment in our company.

If we are able to raise additional capital, we do not know what the terms of any such capital raising would be. In addition, any future sale of our equity securities would dilute the ownership and control of your shares and could be at prices substantially below prices at which our shares currently trade. Our inability to raise capital could require us to significantly curtail or terminate our operations. We may seek to increase our cash reserves through the sale of additional equity or debt securities. The sale of convertible debt securities or additional equity securities could result in additional and potentially substantial dilution to our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations and liquidity and ability to pay dividends. In addition, our ability to obtain additional capital on acceptable terms is subject to a variety of uncertainties. We cannot assure you that financing will be available in amounts or on terms acceptable to us, if at all. Any failure to raise additional funds on favorable terms could have a material adverse effect on our liquidity and financial condition.

Three customers accounted for approximately 77.8% of our total revenue during the nine months ended September 30, 2020, and two customers accounted for approximately 99% of our total revenue during the year ended December 31, 2019. In the event of any material decrease in revenue from these customers, or if we are unable to replace the revenue through the sale of our products to additional customers, our financial condition and results from operations could be materially and adversely affected.

During the nine months ended September 30, 2020, three customers accounted for approximately 77.8% (or $6,016,000) of our total revenue, and during the year ended December 31, 2019, two customers accounted for approximately 99% (or $4,047,000) of our total revenue. This concentration of customers leaves us exposed to the risks associated with the loss of one or more of these significant customers, which would materially and adversely affect our revenues and results of operations. In addition, some of these customers have experienced construction delays in building out their facilities and we have been assisting these customers in addressing these delays, including in certain cases extending their payment terms. Any continued delays will likely result in a negative impact on our revenues. Further, if these customers were to significantly reduce their relationship with us, or in the event that we are unable to replace the revenue through the sale of our products to additional customers, our financial condition and results from operations could be negatively impacted, and such impact would likely be significant.

Our reliance on a limited base of suppliers for our products may result in disruptions to our supply chain and business and adversely affect our financial results.

We rely on a limited number of suppliers for our products and other supplies. If we are unable to maintain supplier arrangements and relationships, if we are unable to contract with suppliers at the quantity and quality levels needed for our business, if any of our key suppliers becomes insolvent or experience other financial distress or if any of our key suppliers is negatively impacted by COVID-19, including with respect to staffing and shipping of products, we could experience disruptions in our supply chain, which could have a material adverse effect on our financial condition, results of operations and cash flows.

Many of our suppliers are experiencing operational difficulties as a result of COVID-19, which in turn may have an adverse effect on our ability to provide products to our customers.

The measures being taken to combat the pandemic are impacting our suppliers and may destabilize our supply chain. For example, manufacturing plants have closed and work at others curtailed in many places where we source our products. Some of our suppliers have had to temporarily close a facility for disinfecting after employees tested positive for COVID-19, and others have faced staffing shortages from employees who are sick or apprehensive about coming to work. Further, the ability of our suppliers to ship their goods to us has become difficult as transportation networks and distribution facilities have had reduced capacity and have been dealing with changes in the types of goods being shipped.

Although the ability of our suppliers to timely ship their goods has affected some of our deliveries, currently the difficulties experienced by our suppliers have not yet materially impacted our ability to deliver products to our customers and we do not significantly depend on any one supplier; however, if this continues, it may negatively affect any inventory we may have and more significantly delay the delivery of merchandise to our customers, which in turn will adversely affect our revenues and results of operations. If the difficulties experienced by our suppliers continue, we cannot guarantee that we will be able to locate alternative sources of supply for our merchandise on acceptable terms, or at all. If we are unable to adequately purchase appropriate amounts of supplies for our products, our business and results of operations may be materially and adversely affected.

As a company with clients operating in the cannabis industry, we face many particular and evolving risks associated with that industry.

We currently serve private clients as they operate in a growing cannabis industry. Any risks related to the cannabis industry that may adversely affect our clients and potential clients may, in turn, adversely affect demand for our products. Specific risks faced by companies operating in the cannabis industry include, but are not limited to, the following:

Marijuana remains illegal under United States federal law

Marijuana is a Schedule-I controlled substance under the Controlled Substances Act and is illegal under federal law. It remains illegal under United States federal law to grow, cultivate, sell or possess marijuana for any purpose or to assist or conspire with those who do so. Additionally, 21 U.S.C. 856 makes it illegal to "knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance." Even in those states in which the use of marijuana has been authorized, its use remains a violation of federal law. Since federal law criminalizing the use of marijuana is not preempted by state laws that legalize its use, strict enforcement of federal law regarding marijuana would likely result in our clients' inability to proceed with their operations, which would adversely affect demands for our products.

Uncertainty of federal enforcement and the need to renew temporary safeguards

On January 4, 2018, Attorney General Sessions rescinded the previously issued memoranda (known as the Cole Memorandum) from the U.S. Department of Justice ("DOJ") that had de-prioritized the enforcement of federal law against marijuana users and businesses that comply with state marijuana laws, adding uncertainty to the question of how the federal government will choose to enforce federal laws regarding marijuana. Attorney General Sessions issued a memorandum to all United States Attorneys in which the DOJ affirmatively rescinded the previous guidance as to marijuana enforcement, calling such guidance "unnecessary." This one-page memorandum was vague in nature, stating that federal prosecutors should use established principles in setting their law enforcement priorities. Under previous

administrations, the DOJ indicated that those users and suppliers of medical marijuana who complied with state laws, which required compliance with certain criteria, would not be prosecuted. As a result, it is now unclear if the DOJ will seek to enforce the Controlled Substances Act against those users and suppliers who comply with state marijuana laws.

Despite former Attorney General Sessions' rescission of the Cole Memorandum, the Department of the Treasury, Financial Crimes Enforcement Network, has not rescinded the "FinCEN Memo" dated February 14, 2014, which de-prioritizes enforcement of the Bank Secrecy Act against financial institutions and marijuana-related businesses which utilize them. This memo appears to be a standalone document and is presumptively still in effect. At any time, however, the Department of the Treasury, Financial Crimes Enforcement Network, could elect to rescind the FinCEN Memo. This would make it more difficult for our clients and potential clients to access the U.S. banking systems and conduct financial transactions, which would adversely affect our operations.

In 2014, Congress passed a spending bill ("2015 Appropriations Bill") containing a provision ("Appropriations Rider") blocking federal funds and resources allocated under the 2015 Appropriations Bill from being used to "prevent such States from implementing their own State medical marijuana law." The Appropriations Rider seemed to have prohibited the federal government from interfering with the ability of states to administer their medical marijuana laws, although it did not codify federal protections for medical marijuana patients and producers. Moreover, despite the Appropriations Rider, the Justice Department maintains that it can still prosecute violations of the federal marijuana ban and continue cases already in the courts. Additionally, the Appropriations Rider must be re-enacted every year. While it was continued in 2016, 2017, 2018, 2019 and 2020, and remains in effect, continued re-authorization of the Appropriations Rider cannot be guaranteed. If the Appropriation Rider is no longer in effect, the risk of federal enforcement and override of state marijuana laws would increase.

Further legislative development beneficial to our operations is not guaranteed

One aspect of our business involves selling goods and services to state-licensed cannabis cultivators. The success of our business may partly depend on the continued development of the cannabis industry and the activity of commercial business within the industry. The continued development of the cannabis industry is dependent upon continued legislative and regulatory authorization of cannabis at the state level and a continued laissez-faire approach by federal enforcement agencies. Any number of factors could slow or halt progress in this area. Further regulatory progress beneficial to the industry cannot be assured. While there may be ample public support for legislative action, numerous factors impact the legislative and regulatory process, including election results, scientific findings or general public events. Any one of these factors could slow or halt progressive legislation relating to cannabis and the current tolerance for the use of cannabis by consumers, which could adversely affect demand for our products and operations.

The cannabis industry could face strong opposition from other industries

We believe that established businesses in other industries may have a strong economic interest in opposing the development of the cannabis industry. Cannabis may be seen by companies in other industries as an attractive alternative to their products, including recreational marijuana as an alternative to alcohol, and medical marijuana as an alternative to various commercial pharmaceuticals. Many industries that could view the emerging cannabis industry as an economic threat are well established, with vast economic and federal and state lobbying resources. It is possible that companies within these industries could use their resources to attempt to slow or reverse legislation legalizing cannabis. Any inroads these companies make in halting or impeding legislative initiatives that would be beneficial to the cannabis industry could have a detrimental impact on some of our clients and, in turn on our operations.

The legality of marijuana could be reversed in one or more states

The voters or legislatures of states in which marijuana has already been legalized could potentially repeal applicable laws which permit the operation of both medical and retail marijuana businesses. These actions might force businesses, including those that are our clients, to cease operations in one or more states entirely.

Changing legislation and evolving interpretations of law

Laws and regulations affecting the medical and adult-use marijuana industry are constantly changing, which could detrimentally affect some of our clients and, in turn, our operations. Local, state and federal marijuana laws and regulations are broad in scope and subject to evolving interpretations, which could require our clients and thus us to incur substantial costs associated with modification of operations to ensure such clients' compliance. In addition, violations of these laws, or allegations of such violations, could disrupt our clients' business and result in a material adverse effect on our operations. In addition, it is possible that regulations may be enacted in the future that will limit the amount of cannabis growth or related products that our commercial clients are authorized to produce. We cannot predict the nature of any future laws, regulations, interpretations or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on our operations.

Dependence on client licensing

Our business is partly dependent on certain of our customers obtaining various licenses from various municipalities and state licensing agencies. There can be no assurance that any or all licenses necessary for our clients to operate their businesses will be obtained, retained or renewed. If a licensing body were to determine that a client of ours had violated applicable rules and regulations, there is a risk the license granted to that client could be revoked, which could adversely affect our operations. There can be no assurance that our existing clients will be able to retain their licenses going forward, or that new licenses will be granted to existing and new market entrants.

Banking regulations could limit access to banking services

Since the use of marijuana is illegal under federal law, there is a compelling argument that banks cannot lawfully accept for deposit funds from businesses involved with marijuana. Consequently, businesses involved in the cannabis industry often have trouble finding a bank willing to accept their business. The inability to open bank accounts may make it difficult for some of our clients to operate and their reliance on cash can result in a heightened risk of theft, which could harm their businesses and, in turn, harm our business. Although the proposal of the Secure and Fair Enforcement Banking Act, also referred to as the SAFE Banking Act, would allow banks to work with cannabis businesses and prevent federal banking regulators from intervening or punishing those banks, the legislation still requires the approval of the United States Senate. There can be no assurance that that the SAFE Banking Act will become law in the United States. Additionally, most courts have denied marijuana-related businesses bankruptcy protection, thus, making it very difficult for lenders to recoup their investments, which may limit the willingness of banks to lend to our clients and to us.

Insurance risks

In the United States, many marijuana-related businesses are subject to a lack of adequate insurance coverage. In addition, many insurance companies may deny claims for any loss relating to marijuana or marijuana-related operations based on their illegality under federal law, noting that a contract for an illegal transaction is unenforceable.

Evolving industry

The cannabis industry is not yet well-developed, and many aspects of this industry's development and evolution cannot be accurately predicted. While we have attempted to identify many risks specific to the cannabis industry, you should carefully consider that there are other risks that cannot be foreseen or are not described in this prospectus, which could materially and adversely affect our business and financial performance. We expect that the cannabis market and our business will evolve in ways that are difficult to predict. Our long-term success may depend on our ability to successfully adjust our strategy to meet the changing market dynamics. If we are unable to successfully adapt to changes in the cannabis industry, our operations could be adversely affected.

Our reliance on our relationship with our strategic investor, Inventronics, without a definitive agreement in place may have an adverse effect on our ability to provide products and services to our customers.

Inventronics Inc., based in Hangzhou, Zhejiang, China, is currently one of the largest companies in the world engaged in the design and manufacture of high efficiency, high reliability and long-life LED drivers, and has worked with us to develop our LED lighting technology. Inventronics is a shareholder of our company and the founder of Inventronics is a member of our board of directors. We intend to continue to rely on our strategic relationship with Inventronics with respect to various aspects of our business, including access to the most advanced LED driver technology, component suppliers and contract manufacturing located in Asia, as well as research and development support. Although we intend in due course to memorialize our relationship with Inventronics in a formal written agreement, we are currently not a party to a definitive agreement that governs our relationship with Inventronics. Accordingly, we do not have the benefit of certain rights and remedies that would otherwise be included in a definitive agreement with another third party. If we are unable to maintain our strong relationship with Inventronics, our lack of a definitive agreement with such company may have an adverse effect on our ability to provide products and services to our customers.

Certain of our officers and directors may become subject to conflicts of interests arising out of our relationship with Bluezone and Enozo.

We are a party to two distribution agreements with companies in which certain of our officers and directors have an interest. Specifically, Guichao Hua, a member of our board of directors, has an ownership interest in Bluezone Products, Inc. of approximately 3%. Raymond Chang, our Chairman of the Board and Chief Executive Officer, is a director of Bluezone and one of the funds he manages, NXT Venture Fund II, has an ownership interest in Bluezone of approximately 8%. Similarly, Mr. Hua has an ownership interest in Enozo Technologies, Inc. of approximately 12% and Mr. Chang is a director of Enozo and has an ownership interest in Enozo of approximately 15%. The overlapping nature of these relationships could cause conflicts of interest for Messrs. Hua and Chang, which may not be easily resolved, or if they are resolved, they may not be resolved on terms advantageous to our company.

Our operations may be impaired if our information technology systems fail to perform adequately or if we are the subject of a data breach or cyber-attack.

We rely on information technology systems in order to conduct business, including communicating with employees and our key commercial customers, ordering and managing materials from suppliers, shipping products and providing SaaS services to our customers and analyzing and reporting results of operations. While we have taken steps to ensure the security of our information technology systems, our systems may nevertheless be vulnerable to computer viruses, security breaches and other disruptions from unauthorized users. If our information technology systems are damaged or cease to function properly for an extended period of time, whether as a result of a significant cyber incident or otherwise, our ability to communicate internally as well as with our customers could be significantly impaired, which may adversely impact our business.

Additionally, in the normal course of our business, we collect, store and transmit proprietary and confidential information regarding our customers, employees, suppliers and others, including personally identifiable information. An operational failure or breach of security from increasingly sophisticated cyber threats could lead to loss, misuse or unauthorized disclosure of this information about our employees or customers, which may result in regulatory or other legal proceedings, and have a material adverse effect on our business and reputation. We also may not have the resources or technical sophistication to anticipate or prevent rapidly-evolving types of cyber-attacks. Any such attacks or precautionary measures taken to prevent anticipated attacks may result in increasing costs, including costs for additional technologies, training and third party consultants. The losses incurred from a breach of data security and operational failures as well as the precautionary measures required to address this evolving risk may adversely impact our financial condition, results of operations and cash flows.

Privacy regulation is an evolving area and compliance with applicable privacy regulations may increase our operating costs or adversely impact our ability to service our clients and market our products and services.

Because we store, process and use data, some of which contains personal information, we are subject to complex and evolving federal, state, and foreign laws and regulations regarding privacy, data protection, and other matters. While we believe we are currently in compliance with applicable laws and regulations, many of these laws

and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business.

We rely on third parties for certain services made available to our customers, which could limit our control over the quality of the user experience and our cost of providing services.

Some of the applications and services available through our proprietary Agrify "Precision Elevated™" cultivation solution, including our flagship hardware product, the Agrify Vertical Farming Unit (AVFU), and our proprietary SaaS product, Agrify Insights™, are provided through relationships with third party service providers. We do not typically have any direct control over these third party service providers. These third party service providers could experience service outages, data loss, privacy breaches, including cyber-attacks, and other events relating to the applications and services they provide that could diminish the utility of these services and which could harm users thereof. Our platform is currently hosted by a third party service provider. There are readily available alternative hosting services available should we desire or need to move to a different web host. Certain ancillary services provided by us also uses the services of third party providers, for which, we believe, there are readily available alternatives on comparable economic terms. Offering integrated platforms which rely, in part, on the services of other providers lessens the control that we have over the total client experience. Should the third party service providers we rely upon not deliver at standards we expect and desire, acceptance of our platforms could suffer, which would have an adverse effect on our business and financial performance. Further, we cannot be assured of entering into agreements with such third party service providers on economically favorable terms.

The growth and success of our business depends on the continued contributions of Raymond Chang, as our key executive officer, as well as our ability to attract and retain qualified personnel.

Our growth and success is dependent upon the continued contributions made by our Chairman of the Board and Chief Executive Officer, Raymond Chang. We rely on Mr. Chang's expertise in business operations when we are developing new products and services. If Mr. Chang cannot serve us or is no longer willing to do so, we may not be able to find alternatives in a timely manner or at all. This may have a material adverse effect on our business. In addition, our growth and success will depend to a significant extent on our ability to identify, attract, hire, train and retain qualified professional, creative, technical and managerial personnel. Competition for experience and qualified talent in the indoor agriculture marketplace can be intense. We may not be successful in identifying, attracting, hiring, training and retaining such personnel in the future. If we are unable to hire, assimilate and retain qualified personnel in the future, such inability could adversely affect our operations.

We face intense competition that could prohibit us from developing or increasing our customer base.

The indoor agriculture industry is highly competitive. We may compete with companies that have greater capital resources and facilities. More established companies with much greater financial resources which do not currently compete with us may be able to more easily adapt their existing operations to our line of business. In addition, the continued growth of the cannabis industry will likely attract some of these existing companies and incentivize them to produce solutions that are competitive with those offered by us. Our competitors may also introduce new and improved products, and manufacturers may sell equipment direct to consumers. We may not be able to successfully compete with larger enterprises devoting significant resources to compete in our target marketspace. Due to this competition, there is no assurance that we will not encounter difficulties in increasing revenues and maintaining and/or increasing market share. In addition, increased competition may lead to reduced prices and/or margins for products we sell.

Protecting and defending against intellectual property claims may have a material adverse effect on our business.

Our ability to compete depends, in part, upon successful protection of our intellectual property relating to our proprietary Agrify "Precision Elevated™" cultivation solution, including our flagship hardware product, the AVFU, and our proprietary SaaS product, Agrify Insights™. We seek to protect our proprietary and intellectual property rights through patent applications, common law copyright and trademark laws, nondisclosure agreements, and non-disclosure provisions within our licensing and distribution arrangements with reputable companies in our target markets. Enforcement of our intellectual property rights would be costly, and there can be no assurance that we will have the resources to undertake all necessary action to protect our intellectual property rights or that we will

be successful. Any infringement of our material intellectual property rights could require us to redirect resources to actions necessary to protect same and could distract management from our underlying business operations. An infringement of our material intellectual property rights and resulting actions could adversely affect our operations.

We have one pending Patent Cooperation Treaty (PCT) application, and we will likely file national applications from this PCT in countries, including the United States. PCT stands for Patent Cooperation Treaty, which is an international patent law treaty. A PCT application is a "placeholder" utility application that establishes a filing date for the invention, and that can subsequently be "nationalized" in any of the more than 140 countries that are members of the PCT. Within 30 months (longer in some jurisdictions) from the application priority date, the applicant must "nationalize" the application and select the countries to which patent protection is sought. After nationalization, country-specific procedures for patent prosecution to patent grant are pursued as to each country or jurisdiction selected. Utilization of the PCT application process allows us to defer patent application deadlines and costs while we consider, for example, our international filing strategy, obtain funding and refine our patent claims.

We cannot assure investors that we will continue to innovate and file new patent applications, or that this application or any future patent applications will result in granted patents. Further, we cannot predict how long it will take for such patents to issue, if at all. It is possible that, for any of our patents that may issue in the future, our competitors may design their products around our patented technologies. Further, we cannot assure investors that other parties will not challenge any patents granted to us, or that courts or regulatory agencies will hold our patents to be valid, enforceable, and/or infringed. We cannot guarantee investors that we will be successful in defending challenges made against our patents and patent applications. Any successful third-party challenge or challenges to our patents could result in the unenforceability or invalidity of such patents, or such patents being interpreted narrowly and/or in a manner adverse to our interests. Our ability to establish or maintain a technological or competitive advantage over our competitors and/or market entrants may be diminished because of these uncertainties. For these and other reasons, our intellectual property may not provide us with any competitive advantage. For example:

- we may not have been the first to make the inventions claimed or disclosed in our patent application;
- we may not have been the first to file patent application. To determine the priority of these inventions, we may have to participate in interference proceedings or derivation proceedings declared by the U.S. Patent and Trademark Office ("USPTO"), which could result in substantial cost to us, and could possibly result in a loss or narrowing of patent rights. No assurance can be given that our granted patents will have priority over any other patent or patent application involved in such a proceeding, or will be held valid as an outcome of the proceeding;
- other parties may independently develop similar or alternative products and technologies or duplicate any of our products and technologies, which can potentially impact our market share, revenue, and goodwill, regardless of whether intellectual property rights are successfully enforced against these other parties;
- it is possible that our issued patents may not provide intellectual property protection of commercially viable products or product features, may not provide us with any competitive advantages, or may be challenged and invalidated by third parties, patent offices, and/or the courts;
- we may be unaware of or unfamiliar with prior art and/or interpretations of prior art that could potentially impact the validity or scope of our patents or patent applications that we may file;
- we take efforts and enter into agreements with employees, consultants, collaborators, and advisors to confirm ownership and chain of title in intellectual property rights. However, an inventorship or ownership dispute could arise that may permit one or more third parties to practice or enforce our intellectual property rights, including possible efforts to enforce rights against us;
- we may elect not to maintain or pursue intellectual property rights that, at some point in time, may be considered relevant to or enforceable against a competitor;
- we may not develop additional proprietary products and technologies that are patentable, or we may develop additional proprietary products and technologies that are not patentable;

- the patents or other intellectual property rights of others may have an adverse effect on our business; and
- we apply for patents relating to our products and technologies and uses thereof, as we deem appropriate. However, we or our representatives or their agents may fail to apply for patents on important products and technologies in a timely fashion or at all, or we or our representatives or their agents may fail to apply for patents in potentially relevant jurisdictions.

To the extent our intellectual property offers inadequate protection, or is found to be invalid or unenforceable, we would be exposed to a greater risk of direct or indirect competition. If our intellectual property does not provide adequate coverage over our competitors' products, our competitive position could be adversely affected, as could our business.

Our success depends in part upon our ability to protect our core technology and intellectual property.

Our success depends in part upon our ability to protect our core technology and intellectual property. To establish and protect our proprietary rights, we rely on a combination of trademark, copyright, patent, trade secret and unfair competition laws of the United States and other countries, as well as contract provisions, license agreements, confidentiality procedures, non-disclosure agreements with third parties, employee disclosure and invention assignment agreements, and other contractual rights, as well as procedures governing internet/domain name registrations. However, there can be no assurance that these measures will be successful in any given case. We may be unable to prevent the misappropriation, infringement or violation of our intellectual property rights, breach of any contractual obligations to us, or independent development of intellectual property that is similar to ours, any of which could reduce or eliminate any competitive advantage we have developed, adversely affecting our revenues or otherwise harming our business.

We generally control access to and use of our proprietary technology and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, customers, and partners, and our software is protected by U.S. copyright laws.

Despite efforts to protect our proprietary rights through intellectual property laws, licenses, and confidentiality agreements, unauthorized parties may still copy or otherwise obtain and use our software and technology. Companies in the Internet, technology, and software industries frequently enter into litigation based on allegations of infringement, misappropriation, or violations of intellectual property rights or other laws. From time to time, we may face allegations that we have infringed the trademarks, copyrights, patents, trade secrets and other intellectual property rights of third parties, including competitors. If it became necessary for us to resort to litigation to protect these rights, any proceedings could be burdensome, costly and divert the attention of our personnel, and we may not prevail. In addition, any repeal or weakening of laws or enforcement in the United States or internationally intended to protect intellectual property rights could make it more difficult for us to adequately protect our intellectual property rights, negatively impacting their value and increasing the cost of enforcing our rights.

We have obtained and applied for U.S. trademark and service mark registrations and will continue to evaluate the registration of additional trademarks and service marks or, as appropriate. We cannot guarantee that any of our pending trademark applications will be approved by the applicable governmental authorities. Moreover, even if the trademark applications are approved, third parties may seek to oppose or otherwise challenge these registrations. A failure to obtain registrations for our trademarks could limit and impede our marketing efforts.

We may need to enter into intellectual property license agreements in the future, and if we are unable to obtain these licenses, our business could be harmed.

We may need or may choose to obtain licenses and/or acquire intellectual property rights from third parties to advance our research or commercialization of our current or future products. We also cannot provide any assurances that third-party patents do not exist that might be enforced against our current or future products in the absence of such a license or acquisition. We may fail to obtain any of these licenses or intellectual property rights on commercially reasonable terms. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. In that event, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected products, which could materially harm our business and the third parties owning such intellectual property rights could seek either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation.

Others may assert intellectual property infringement claims against us.

Companies in the software and technology industries can own patents, copyrights, trademarks, and trade secrets, and frequently enter into litigation based on allegations of infringement, misappropriation, or other violations of intellectual property or other rights. In addition, various "non-practicing entities" that own patents (colloquially known as "patent trolls") often attempt to aggressively assert their rights to extract value from technology companies. It is possible that, from time to time, third parties may claim that our products misappropriate or infringe their intellectual property rights. Irrespective of the validity or the successful assertion of any such claims, we could incur significant costs and diversion of resources in defending against these claims, which could adversely affect our operations. We may receive unfavorable preliminary or interim rulings in the course of litigation, and there can be no assurances that favorable final outcomes will be obtained in all cases. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. As a result, we may also be required to develop alternative non-infringing technology or practices or discontinue the practices. The development of alternative non-infringing technology or practices could require significant effort and expense or may not be feasible. In addition, to the extent claims against us are successful, we may have to pay substantial money damages or discontinue, modify, or rename certain products or services that are found to be in violation of another party's rights. We may have to seek a license (if available on acceptable terms, or at all) to continue offering products and services, which may significantly increase our operating expenses.

Data privacy and security concerns relating to our technology and our practices could damage our reputation, cause us to incur significant liability, and deter current and potential users or customers from using our products and services. Software bugs or defects, security breaches, and attacks on our systems could result in the improper disclosure and use of user data and interference with our users and customers' ability to use our products and services, harming our business operations and reputation.

Concerns about our practices with regard to the collection, use, disclosure, or security of personal information or other data-privacy-related matters, even if unfounded, could harm our reputation, financial condition, and operating results. Our policies and practices may change over time as expectations regarding privacy and data change. Our products and services involve the storage and transmission of proprietary information, and bugs, theft, misuse, defects, vulnerabilities in our products and services, and security breaches expose us to a risk of loss of this information, improper use and disclosure of such information, litigation, and other potential liability. Systems and control failures, security breaches and/or inadvertent disclosure of user data could result in government and legal exposure, seriously harm our reputation and brand and, therefore, our business, and impair our ability to attract and retain customers.

We may experience cyber-attacks and other attempts to gain unauthorized access to our systems. We may experience future security issues, whether due to employee error or malfeasance or system errors or vulnerabilities in our or other parties' systems, which could result in significant legal and financial exposure. We may be unable to anticipate or detect attacks or vulnerabilities or implement adequate preventative measures. Attacks and security issues could also compromise trade secrets and other sensitive information, harming our business. As a result, we may suffer significant legal, reputational, or financial exposure, which could harm our business, financial condition, and operating results.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

As of December 31, 2019, we had net operating loss (NOL) carryforwards for federal and state income tax purposes which may be available to offset taxable income in the future, and which expire in various years for federal purposes if not utilized. The state NOLs will expire depending upon the various rules in the states in which we operate. A lack of future taxable income would adversely affect our ability to utilize these NOLs before they expire. In general, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" (as defined under Section 382 of the Code and applicable Treasury Regulations) is subject to limitations on its ability to utilize its pre-change NOLs to offset its future taxable income. We may experience a future ownership change under Section 382 of the Code that could affect our ability to utilize the NOLs to offset our income. Furthermore, our ability to utilize NOLs of companies that we have acquired or may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to reduce future income tax liabilities, including for state income tax purposes. For these

reasons, we may not be able to utilize a material portion of our NOLs, even if we attain profitability, which could potentially result in increased future tax liability to us and could adversely affect our results of operations and financial condition.

There are no assurances that the PPP loans will be forgivable in whole or in part.

In May and July 2020, we entered into a two separate Loan Agreements and Promissory Notes (the "PPP Loans") with Bank of America pursuant to the Paycheck Protection Program (the "PPP") under the recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") administered by the U.S. Small Business Administration. We received total proceeds of $779,000 and $44,410 from the unsecured PPP Loans. The PPP Loans are is scheduled to mature on May 7, 2022 and July 27, 2022, respectively, and have an interest rate of 1.00% per annum and is are subject to the terms and conditions applicable to loans administered by the U.S. Small Business Administration (the "SBA") under the CARES Act. The PPP Loans may be prepaid at any time prior to its maturity with no prepayment penalties.

The PPP Loans contain customary events of default relating to, among other things, payment defaults and breaches of representations and warranties. Subject to certain conditions, the PPP Loans may be forgiven in whole or in part by applying for forgiveness pursuant to the CARES Act and the PPP. The amount of loan proceeds eligible for forgiveness is based on a formula based on a number of factors, including the amount of loan proceeds used by us for certain eligible expenses including payroll costs, rent payments on certain leases and certain qualified utility payments, provided that, among other things, at least 60% of the loan amount is used for eligible payroll costs, the employer maintaining or rehiring employees and maintaining salaries at a certain level. According to the PPP, the lender has 60 days from receipt of the completed application to issue a decision to the SBA. If the lender determines that the borrower is entitled to forgiveness of some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from the SBA at the time the lender issues its decision to the SBA. The SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to the SBA.

In accordance with the requirements of the CARES Act and the PPP, we have used all of the proceeds from the PPP Loan primarily for payroll costs. We have not yet applied for forgiveness of this loan. We believe that we will be eligible for full forgiveness under the program, but there is no assurance that the full loan amount will be forgiven and we cannot anticipate the timing of any such forgiveness. If the principal amount is not forgiven in full, we would be obligated to repay by May 7, 2022 and July 27, 2022 any principal amount not forgiven and interest accrued from May 7, 2020 and July 27, 2020, respectively. Although we believe that we satisfied all eligibility criteria for the PPP Loan and that our receipt of the PPP Loan is consistent with the objectives of the PPP Loan of the CARES Act, if it is later determined that we were ineligible to receive the PPP Loan, we may be required to repay the PPP Loan in its entirety and/or be subject to additional penalties and adverse publicity, which could have a material adverse effect on our business, results of operations, and financial condition.

Risks Related to this Offering and Ownership of our Common Stock

There is no existing market for our common stock and we do not know if one will develop to provide you with adequate liquidity.

Prior to this offering, there has not been a public market for our common stock. We cannot assure you that an active trading market for our common stock will develop following this offering, or if it does develop, it may not be maintained. You may not be able to sell your common stock quickly or at the market price if trading in our securities is not active. The initial public offering price for the shares offered hereby will be determined by negotiations between us and the representative of the underwriters and may not be indicative of prices that will prevail in the trading market.

Our management will have broad discretion over the use of the proceeds we receive in this offering and might not apply the proceeds in ways that increase the value of your investment.

Our management will have broad discretion over the use of our net proceeds from this offering, and you will be relying on the judgment of our management regarding the application of these proceeds. Our management might

not apply our net proceeds in ways that ultimately increase the value of your investment. We expect to use the net proceeds from this offering for general corporate purposes, including working capital and capital expenditures (or CapEx), which may in the future include investments in, or acquisitions of, complementary businesses, services or technologies. Our management might not be able to yield a significant return, if any, on any investment of these net proceeds. You will not have the opportunity to influence our decisions on how to use our net proceeds from this offering.

Concentration of ownership among our existing executive officers, directors and their affiliates may prevent new investors from influencing significant corporate decisions.

Upon completion of this offering, our executive officers, directors and their affiliates will beneficially own, in the aggregate, approximately % of our outstanding shares of common stock. In particular, Raymond Chang, our Chairman of the Board and Chief Executive Officer, will beneficially own approximately % of our outstanding shares of common stock upon completion of this offering. As a result, these stockholders will be able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment of our articles of incorporation and approval of significant corporate transactions. This control could have the effect of delaying or preventing a change of control of our company or changes in management and will make the approval of certain transactions difficult or impossible without the support of these stockholders.

A total of , or %, of our total outstanding shares after the offering are restricted from immediate resale, but may be sold on a stock exchange in the near future. The large number of shares eligible for public sale or subject to rights requiring us to register them for public sale could depress the market price of our common stock.

The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market after this offering, and the perception that these sales could occur may also depress the market price of our common stock. Based on shares outstanding as of , 2020, we will have shares of common stock outstanding after this offering. Of these shares, the common stock sold in this offering will be freely tradable in the United States, except for any shares purchased by our "affiliates" as defined in Rule 144 under the Securities Act of 1933. The holders of shares of outstanding common stock have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock during the 180-day period beginning on the date of this prospectus, except with the prior written consent of the underwriters. After the expiration of the 180-day restricted period, these shares may be sold in the public market in the United States, subject to prior registration in the United States, if required, or reliance upon an exemption from U.S. registration, including, in the case of shares held by affiliates or control persons, compliance with the volume restrictions of Rule 144.

Number of Shares and % of Total Outstanding	Date Available for Sale into Public Markets
, or %	Immediately after this offering.
, or %	180 days after the date of this prospectus due to contractual obligations and lock-up agreements between the holders of these shares and the underwriters. However, the underwriters can waive the provisions of these lock-up agreements and allow these stockholders to sell their shares at any time, provided their respective one-year holding periods under Rule 144 have expired.
, or %	From time to time after the date 180 days after the date of this prospectus upon expiration of their respective one-year holding periods in the U.S.

Upon completion of this offering, stockholders owning an aggregate of shares (including convertible shares) will be entitled, under contracts providing for registration rights, to require us to register shares of our common stock owned by them for public sale in the United States. In addition, we intend to file a registration statement to register the approximately shares reserved for future issuance under our equity compensation plans. Upon effectiveness of that registration statement, subject to the satisfaction of applicable exercise periods and, in certain cases, lock-up agreements with the representatives of the underwriters referred to above, the shares of common stock issued upon exercise of outstanding options will be available for immediate resale in the United States in the open market.

Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our common stock.

Provisions in our articles of incorporation, our by-laws and Nevada law might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Provisions of our articles of incorporation, our by-laws and Nevada law may have the effect of deterring unsolicited takeovers or delaying or preventing a change in control of our company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interests. These provisions include:

- the inability of stockholders to call special meetings; and
- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could include the right to approve an acquisition or other change in our control or could be used to institute a rights plan, also known as a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our board of directors.

The existence of the forgoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that you could receive a premium for your common stock in an acquisition.

Purchasers in this offering will experience immediate and substantial dilution in the book value of their investment.

The anticipated initial public offering price of our common stock is substantially higher than the net tangible book value per share of our outstanding common stock immediately after this offering. Therefore, if you purchase our common stock in this offering, you will incur immediate dilution of $ in the net tangible book value per share from the price you paid. In addition, following this offering, purchasers in the offering will have contributed % of the total consideration paid by our stockholders to purchase shares of common stock, in exchange for acquiring approximately % of our total outstanding shares as of , 2020 after giving effect to this offering. The exercise of outstanding stock options will result in further dilution.

We are eligible to be treated as an "emerging growth company," as defined in the JOBS Act, and a "smaller reporting company" within the meaning of the Securities Act, and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies or smaller reporting companies will make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including (1) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, (2) reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements and (3) exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, as an emerging growth company, we are only required to provide two years of audited financial statements and two years of selected financial data in this prospectus. We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our common stock held by non-affiliates exceeds $700.0 million as of any March 31 before that time or if we have total annual gross revenue of $1.0 billion or more during any fiscal year before that time, after which, in each case, we would no longer be an emerging growth company as of the following December 31 or, if we issue more than $1.0 billion in non-convertible debt during any three-year period before that time, we would cease to be an emerging growth company immediately.

Additionally, we are a "smaller reporting company" as defined in Item 10(f)(1) of Regulation S-K. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements. We will remain a smaller reporting company until the last day of the fiscal year in which (1) the market value of our shares of common stock held by non-affiliates exceeds $250 million as of the prior June 30, or (2) our annual revenues exceeded $100 million during such completed fiscal year and the market value of our ordinary shares held by non-affiliates exceeds $700 million as of the prior June 30. To the extent we take advantage of such reduced disclosure obligations, it may also make comparison of our financial statements with other public companies difficult or impossible.

After we are no longer an "emerging growth company," we expect to incur additional management time and cost to comply with the more stringent reporting requirements applicable to companies that are deemed accelerated filers or large accelerated filers, including complying with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

We have not and do not expect to declare any dividends to our shareholders in the foreseeable future.

We have not and do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors may need to rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not purchase our common stock.

General Risk Factors

The COVID-19 pandemic and the efforts to mitigate its impact may have an adverse effect on our business, liquidity, results of operations, financial condition and price of our securities.

The pandemic involving the novel strain of coronavirus and related respiratory disease (which we refer to as COVID-19) and the measures taken to combat it, have had an adverse effect on our business. Public health authorities and governments at local, national and international levels have announced various measures to respond to this pandemic. Some measures that directly or indirectly impact our business include:

- voluntary or mandatory quarantines;
- restrictions on travel; and
- limiting gatherings of people in public places.

We have undertaken measures in an effort to mitigate the spread of COVID-19 including limiting company travel and in-person meetings. We also have enacted our business continuity plans, including implementing procedures requiring employees working remotely where possible which may make maintaining our normal level of corporate operations, quality controls and internal controls difficult. Notwithstanding these efforts, our results of operations have been adversely impacted by COVID-19 and this may continue.

Moreover, the COVID-19 pandemic has previously caused some temporary delays in the delivery of our inventory, although recently we are no longer experiencing such delays. In addition, the travel restrictions imposed as a result of COVID-19 have impacted our ability to visit customer sites to perform services related to our products. Further, the COVID-19 pandemic and mitigation efforts have also adversely affected our customers' financial condition, resulting in reduced spending for the products we sell.

As events are rapidly changing, we do not know how long the COVID-19 pandemic, or localized outbreaks or recurrences of COVID-19, and the measures that have been introduced to respond to COVID-19 will disrupt our operations or the full extent of that disruption. Further, once we are able to restart normal operations doing so may take time and will involve costs and uncertainty. We also cannot predict how long the effects of COVID-19 and the efforts to contain it will continue to impact our business after the pandemic is under control. Governments could take additional restrictive measures to combat the pandemic that could further impact our business or the economy in the geographies in which we operate. It is also possible that the impact of the pandemic and response on our suppliers,

customers and markets will persist for some time after governments ease their restrictions. These measures have negatively impacted, and may continue to impact, our business and financial condition as the responses to control COVID-19 continue.

A prolonged economic downturn, particularly in light of the COVID-19 pandemic, could adversely affect our business.

Uncertain global economic conditions, in particular in light of the COVID-19 pandemic, could adversely affect our business. Negative global and national economic trends, such as decreased consumer and business spending, high unemployment levels and declining consumer and business confidence, pose challenges to our business and could result in declining revenues, profitability and cash flow. Although we continue to devote significant resources to support our brands, unfavorable economic conditions may negatively affect demand for our products.

Increases in costs, disruption of supply or shortage of raw materials could harm our business.

We may experience increases in the cost or a sustained interruption in the supply or shortage of raw materials. For example, the tariffs currently imposed for importing goods from China has significantly increased. Any such an increase or supply interruption could materially negatively impact our business, prospects, financial condition and operating results. We use various raw materials in our business including aluminum. The prices for these raw materials fluctuate depending on market conditions and global demand for these materials and could adversely affect our business and operating results. Substantial increases in the prices for our raw materials increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased prices for our products and services.

Litigation may adversely affect our business, financial condition and results of operations.

Although we are not currently aware of any legal proceedings brought against us, from time to time in the normal course of our business operations, we may become subject to litigation involving intellectual property, data privacy and security, consumer protection, commercial disputes and other matters that may negatively affect our operating results if changes to our business operation are required. Due to our manufacturing and sale of our products, including hardware and software, we may also be subject to a variety of claims including product warranty, product liability, and consumer protection claims related to product defects, among other litigation. We may also be subject to claims involving health and safety, hazardous materials usage, other environmental impacts, or service disruptions or failures. The cost to defend such litigation may be significant and may require a diversion of our resources. There also may be adverse publicity associated with litigation that could negatively affect customer perception of our business, regardless of whether the allegations are valid or whether we are ultimately found liable. As a result, litigation may adversely affect our business, financial condition and results of operations. In addition, insurance may not cover existing or future claims, be sufficient to fully compensate us for one or more of such claims, or continue to be available on terms acceptable to us. A claim brought against us that is uninsured or underinsured could result in unanticipated costs, thereby adversely affecting our results of operations and resulting in a reduction in the trading price of our stock.

An active, liquid and orderly trading market for our common stock may not develop, the price of our stock may be volatile, and you could lose all or part of your investment.

The trading price of our common stock following this offering is likely to be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. Our stock price could be subject to wide fluctuations in response to a variety of factors, which include:

- whether we achieve our anticipated corporate objectives;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in our financial or operational estimates or projections;
- our ability to implement our operational plans;
- termination of the lock-up agreement or other restrictions on the ability of our stockholders to sell shares after this offering;

- changes in the economic performance or market valuations of companies similar to ours; and
- general economic or political conditions in the United States or elsewhere.

In addition, the stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock shortly following this offering. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

Our failure to meet the continuing listing requirements of The NASDAQ Capital Market could result in a de-listing of our securities.

If, after this offering, we fail to satisfy the continuing listing requirements of NASDAQ, such as the corporate governance, stockholders equity or minimum closing bid price requirements, NASDAQ may take steps to delist our common stock. Such a delisting would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. In the event of a delisting, we would likely take actions to restore our compliance with NASDAQ's listing requirements, but we can provide no assurance that any such action taken by us would allow our common stock to become listed again, stabilize the market price or improve the liquidity of our securities, prevent our common stock from dropping below the NASDAQ minimum bid price requirement or prevent future non-compliance with NASDAQ's listing requirements.

We will incur increased costs and demands upon management as a result of complying with the laws and regulations affecting public companies, which could adversely affect our operating results.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company, including costs associated with public company reporting and corporate governance requirements. These requirements include compliance with Section 404 and other provisions of the Sarbanes-Oxley Act, as well as rules implemented by the Securities and Exchange Commission, or SEC, and the NASDAQ. In addition, our management team will also have to adapt to the requirements of being a public company. We expect complying with these rules and regulations will substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly.

The increased costs associated with operating as a public company will decrease our net income or increase our net loss, and may require us to reduce costs in other areas of our business or increase the prices of our products or services. Additionally, if these requirements divert our management's attention from other business concerns, they could have a material adverse effect on our business, financial condition and operating results.

As a public company, we also expect that it may be more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as our executive officers.

As a result of becoming a public company, we will be obligated to develop and maintain proper and effective internal control over financial reporting. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in our company and, as a result, the value of our common stock.

We will be required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the first fiscal year beginning after the effective date of this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting, as well as a statement that our auditors have issued an attestation report on effectiveness of our internal controls.

We are in the very early stages of the costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation needed to comply with Section 404. We may not be able to remediate future material weaknesses, or to complete our evaluation, testing and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. If we are unable to assert that our internal control over financial reporting is effective, or if our auditors are unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which would have a material adverse effect on the price of our common stock.

If our shares of common stock become subject to the penny stock rules, it would become more difficult to trade our shares.

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than $5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not obtain or retain a listing on NASDAQ and if the price of our common stock is less than $5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

The financial and operational projections that we may make from time to time are subject to inherent risks.

The projections that our management may provide from time to time (including, but not limited to, those relating to potential peak sales amounts, production and supply dates, and other financial or operational matters) reflect numerous assumptions made by management, including assumptions with respect to our specific as well as general business, economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond our control. Accordingly, there is a risk that the assumptions made in preparing the projections, or the projections themselves, will prove inaccurate. There will be differences between actual and projected results, and actual results may be materially different from those contained in the projections. The inclusion of the projections in this prospectus should not be regarded as an indication that we or our management or representatives considered or consider the projections to be a reliable prediction of future events, and the projections should not be relied upon as such.

If we were to dissolve, the holders of our securities may lose all or substantial amounts of their investments.

If we were to dissolve as a corporation, as part of ceasing to do business or otherwise, we may be required to pay all amounts owed to any creditors before distributing any assets to the investors. There is a risk that in the event of such a dissolution, there will be insufficient funds to repay amounts owed to holders of any of our indebtedness and insufficient assets to distribute to our other investors, in which case investors could lose their entire investment.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

In making your investment decision, you should understand that we and the underwriters have not authorized any other party to provide you with information concerning us or this offering.

You should carefully evaluate all of the information in this prospectus before investing in our company. We may receive media coverage regarding our company, including coverage that is not directly attributable to statements made by our officers, that incorrectly reports on statements made by our officers or employees, or that is misleading as a result of omitting information provided by us, our officers or employees. We and the underwriters have not authorized any other party to provide you with information concerning us or this offering, and you should not rely on this information in making an investment decision.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections entitled "Prospectus Summary," "Risk Factors," "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and "Business" contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy and plans and our objectives for future operations, are forward-looking statements. The words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect" and similar expressions are intended to identify forward-looking statements. These forward-looking statements include statements relating to:

- our market opportunity;
- the effects of increased competition as well as innovations by new and existing competitors in our market;
- our ability to retain our existing customers and to increase our number of customers;
- the future growth of the indoor agriculture industry and demands of our customers;
- our ability to effectively manage or sustain our growth;
- potential acquisitions and integration of complementary businesses and technologies;
- our expected use of proceeds from this offering;
- our ability to maintain, or strengthen awareness of, our brand;
- future revenue, hiring plans, expenses, capital expenditures, and capital requirements;
- our ability to comply with new or modified laws and regulations that currently apply or become applicable to our business;
- the loss of key employees or management personnel;
- our financial performance and capital requirements; and
- our ability to maintain, protect, and enhance our intellectual property.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short term and long-term business operations and objectives, and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in "Risk Factors." Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this prospectus to conform these statements to actual results or to changes in our expectations.

You should read this prospectus and the documents that we reference in this prospectus and have filed with the SEC as exhibits to the registration statement of which this prospectus is a part with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

MARKET, INDUSTRY AND OTHER DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market size, is based on information from various sources, on assumptions that we have made that are based on those data and other similar sources and on our knowledge of the markets for our services. These data involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. We have not independently verified any third party information and cannot assure you of its accuracy or completeness. While we believe the market position, market opportunity and market size information included in this prospectus is generally reliable, such information is inherently imprecise. In addition, projections, assumptions and estimates of our future performance and the future performance of the industry in which we operate is necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors" and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

In addition, we own or have rights to trademarks or trade names that we use in connection with the operation of our business, including our corporate names, logos and website names. In addition, we own or have the rights to copyrights, trade secrets and other proprietary rights that protect the content of our products. This prospectus may also contain trademarks, service marks and trade names of other companies, which are the property of their respective owners. Our use or display of third parties' trademarks, service marks, trade names or products in this prospectus is not intended to, and should not be read to, imply a relationship with or endorsement or sponsorship of us. Solely for convenience, some of the copyrights, trade names and trademarks referred to in this prospectus are listed without their ©, ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our copyrights, trade names and trademarks. All other trademarks are the property of their respective owners.

USE OF PROCEEDS

We estimate that we will receive net proceeds from this offering of approximately $, based on an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover of this prospectus, and after deducting the underwriting discounts and commissions, including an underwriting discount of 8.0% (without taking into account an underwriting discount of 3.5% of the public offering price as applied to shares sold to certain investors), and estimated offering expenses payable by us. If the underwriters exercise their option to purchase additional shares, we estimate that we will receive an additional $ million in net proceeds.

A $1.00 increase (decrease) in the assumed initial public offering price of $ would increase (decrease) the net proceeds to us from this offering by $.

We intend to use the net proceeds from this offering for the following purposes:

- Approximately $[__] million on research and development for future generations of our products and software;
- Approximately $[__] million on sales and marketing activities;
- Approximately $[__] million hire additional personnel;
- Approximately $[__] million capital investment in research, development, and testing equipment;
- Approximately $[__] million for our equipment financing plan to provide limited credit to our customers; and
- The remainder for working capital and general corporate purposes.

The foregoing expected use of net proceeds from this offering represents our intentions based upon our current plans and business conditions. However, the nature, amounts and timing of our actual expenditures may vary significantly depending on numerous factors. As a result, our management has and will retain broad discretion over the allocation of the net proceeds from this offering. We may find it necessary or advisable to use the net proceeds from this offering for other purposes, and we will have broad discretion in the application of net proceeds from this offering.

Pending specific utilization of the net proceeds as described above, we intend to invest the net proceeds of the offering in short-term investment grade and U.S. government securities.

DIVIDEND POLICY

We have never paid cash dividends on any of our capital stock and currently intend to retain our future earnings, if any, to fund the development and growth of our business.

CAPITALIZATION

As described elsewhere in this prospectus, all share and per share amounts set forth below have been presented on a retroactive basis to reflect a one-for-[•] reverse stock split of our outstanding common stock implemented on [•], 2021.

The following table sets forth our capitalization as of September 30, 2020:

- On an actual basis;
- On a pro forma basis, to give effect to the conversion of our outstanding shares of Series A Preferred Stock into _____ shares of common stock immediately prior to the closing of this offering based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%;
- On a pro forma basis, to give effect to the conversion of our outstanding promissory notes into _____ shares of common stock immediately prior to the closing of this offering based on a conversion formula equal to the quotient of (i) the outstanding principal amount of the promissory notes together with all accrued and unpaid interest hereunder immediately prior to the closing of this offering divided by (ii) the price equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%; and
- On a pro forma as adjusted basis, to give further effect to (i) the sale of _____ shares of common stock by us in this offering at the initial public offering price of $ ___ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes included elsewhere in this prospectus.

	September 30, 2020 (unaudited)		
	Actual	Pro Forma	Pro Forma As Adjusted
Stockholders' deficit:			
Preferred stock, $.001 par value, 3,000,000 shares authorized; 60,000 shares issued and outstanding.	—		
Common stock, $.001 par value, 50,000,000 shares authorized; 6,662,028 shares issued and outstanding; _____ shares issued and outstanding, as adjusted[(1)]	7		
Additional paid-in capital	17,642		
Accumulated deficit	(13,455)		
Other comprehensive income	—		
Total stockholders' equity (deficit)	4,194		
Long-term debt, including current portion	828		
Total capitalization			

The number of shares of our common stock outstanding set forth in the table above excludes:

- 4,951,085 shares of common stock issuable upon the weighted exercise of outstanding options at a weighted average exercise price of $2.21 per share;
- 355,998 shares reserved for issuance under our equity incentive plan;
- 1,250,000 shares of common stock issuable upon the exercise of outstanding warrants associated with our 2020 convertible promissory notes at a weighted average exercise price of $0.01 per share; and
- ____ shares reserved for issuance under the Representative's Warrant.

DILUTION

As described elsewhere in this prospectus, all share and per share amounts set forth below have been presented on a retroactive basis to reflect a one-for-[•] reverse stock split of our outstanding common stock implemented on [•], 2021.

"Net tangible book value" is total assets minus the sum of liabilities and intangible assets. "Net tangible book value per share" is net tangible book value divided by the total number of shares outstanding on September 30, 2020. After giving pro forma effect to the conversion of our outstanding shares of Series A Preferred Stock into _____ shares of common stock immediately prior to the consummation of this offering based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%, our pro forma net tangible book value on September 30, 2020 was approximately $___ million, or $__ per share.

After giving effect to our issuance and sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the mid-point of the estimated price range shown on the cover of this prospectus, after deducting the estimated underwriting discounts and offering expenses payable by us, the pro forma as adjusted net tangible book value as of September 30, 2020 would have been $, or $ per share. This represents an immediate increase in pro forma net tangible book value of $____ per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of $____ per share to investors purchasing shares of common stock in this offering at the assumed public offering price.

The following table illustrates this dilution:

Assumed public offering price per share	$
Pro forma net tangible book value per share as of September 30, 2020	
Increase in pro forma net tangible book value per share attributable to the offering	
Pro forma as adjusted net tangible book value per share as of September 30, 2020 after the offering	
Dilution per share to new investors in the offering	$

A $1.00 increase (decrease) in the assumed initial public offering price of $___ per share would increase (decrease) the pro forma net tangible book value by ____, the pro forma net tangible book value per share after this offering by $___ per share and the dilution in pro forma net tangible book value per share to investors in this offering by $___ per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and offering expenses payable by us. If the underwriters exercise their over-allotment option in full, the pro forma as adjusted net tangible book value will increase to $___ per share, representing an immediate increase to existing stockholders of $ ___ per share and an immediate dilution of $___ per share to new investors. If any shares are issued in connection with outstanding options, you will experience further dilution.

The following table presents, on a pro forma basis as of September 30, 2020, the differences between the existing stockholders and the new investors purchasing our common stock in this offering with respect to the number of shares purchased from us, the total consideration paid or to be paid to us, which includes net proceeds received from the issuance of common stock, cash received from the exercise of stock options and the average price per share paid or to be paid to us at the public offering price of $_____ per share, the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors		%	$	%	$
Total		%	$	%	

Assuming the underwriters' option to purchase additional shares is exercised in full, sales in this offering will reduce the percentage of shares held by existing stockholders to _____% and will increase the number of shares held by our new investors to _____ shares, or ____%, assuming no purchases of our common stock by existing stockholders in this offering.

The number of shares of our common stock outstanding set forth in the table above excludes:

- 4,951,085 shares of common stock issuable upon the weighted exercise of outstanding options at a weighted average exercise price of $2.21 per share;
- 355,998 shares reserved for issuance under our equity incentive plan;
- 1,250,000 shares of common stock issuable upon the exercise of outstanding warrants associated with our 2020 convertible promissory notes at a weighted average exercise price of $0.01 per share; and
- shares reserved for issuance under the Representative's Warrant.

SELECTED HISTORICAL FINANCIAL AND OPERATING DATA

The following table presents our selected historical financial data for the periods presented and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statement and notes thereto included elsewhere in this prospectus. The statements of operations data for the fiscal years ended December 31, 2019 and 2018 and the statements of financial condition data as of September 30, 2020 and 2019 are derived from our audited financial statements and interim reviewed financial statements included elsewhere in this prospectus. The statements of operations data for the nine months ended September 30, 2020 and 2019 and the statements of financial condition data as of September 30, 2020 and 2019 are derived from our unaudited financial statements included elsewhere in this prospectus.

	Year Ended December 31,		Nine months Ended September 30,	
	2019	2018	2020	2019
			(unaudited)	(unaudited)
Statements of Operations Data:				
Revenue, net	$ 4,088,000	$ 1,769,000	$ 7,734,000	$ 2,425,000
Cost of goods sold	4,333,000	1,547,000	6,874,000	2,716,000
Operating expenses	2,846,000	1,238,000	9,332,000	907,000
Loss from operations	(3,091,000)	(1,016,000)	(8,472,000)	(1,198,000)
Miscellaneous income (expense), net	49,000	2,000	(139,000)	(3,000)
Net loss before non-controlling interest	(3,042,000)	(1,014,000)	(8,611,000)	(1,201,000)
Loss attributable to non-controlling interest	—	—	49,000	—
Net loss	(3,042,000)	(1,014,000)	(8,562,000)	(1,201,000)
Net loss per share, basic and diluted				

	As of December 31,		As of September 30, 2020
	2019	2018	
			(unaudited)
Balance Sheet Data:			
Cash and cash equivalents	$ 206,000	$ 85,000	$ 4,958,000
Total assets	3,227,000	2,196,000	13,490,000
Total current liabilities	4,032,000	3,821,000	8,206,000
Total liabilities	4,032,000	3,954,000	9,098,000
Total stockholders' equity (deficit)	(805,000)	(1,758,000)	4,194,000

The following table presents our selected historical financial data for the periods presented and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statement and notes thereto included elsewhere in this prospectus. The statements of operations data for the fiscal years ended December 31, 2019 and 2018 and the statements of financial condition data as of September 30, 2020 and 2019 are derived from our audited financial statements and interim reviewed financial statements included elsewhere in this prospectus. The statements of operations data for the nine months ended September 30, 2020 and 2019 and the statements of financial condition data as of September 30, 2020 and 2019 are derived from our unaudited financial statements included elsewhere in this prospectus.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of our operations together with its consolidated financial statements and the notes thereto appearing elsewhere in this prospectus. This discussion contains forward-looking statements reflecting our current expectations, whose actual outcomes involve risks and uncertainties. Actual results and the timing of events may differ materially from those stated in or implied by these forward-looking statements due to a number of factors, including those discussed in the sections entitled "Risk Factors", "Cautionary Statement regarding Forward-Looking Statements" and elsewhere in this prospectus.

As described elsewhere in this prospectus, all share and per share amounts set forth below have been presented on a retroactive basis to reflect a one-for-[•] reverse stock split of our outstanding common stock implemented on [•], 2021.

Overview

We are a developer of highly advanced and proprietary precision hardware and software grow solutions for the indoor agriculture marketplace. We believe we are the only company with an automated and fully integrated grow solution in the industry. We believe our *Agrify* "*Precision Elevated*™" cultivation solution is vastly differentiated from anything else on the market in that it combines our seamlessly integrated hardware and software offerings with a wide range of associated services such as consulting, engineering, and construction to form what we believe is the most complete solution available from a single provider. The totality of our product mix and service capabilities form an unrivaled ecosystem in what has historically been an extremely fragmented market. As a result, we believe we are well situated to create a dominant market position in the indoor agriculture sector.

We had limited revenues from operations in each of the last two fiscal years, and in the current fiscal year. Through 2018 and 2019, we concentrated our business with TriGrow Systems, Inc., acting as our exclusive distributor. During January 2020, we acquired TriGrow Systems, Inc. and began selling our products directly to end customers. In July 2020, we acquired Harbor Mountain LLC, a company that has been producing and assembling many of our products.

Recent Events

Series A Convertible Preferred Stock

Beginning in the first quarter of 2020, we issued an aggregate of 60,000 shares of our Series A Convertible Preferred Stock, or Series A Preferred Stock, for an aggregate purchase price of $6,000,000. In May 2020, we completed our offering of Series A Preferred with the issuance of an additional 40,000 shares of Series A Preferred for an aggregate purchase price of $4,000,000.

The Series A Preferred Stock is senior to our shares of common stock, par value $0.001 per share, and each other class or series of our capital stock hereafter created (which we refer to collectively with the common stock as junior stock). Holders of Series A Preferred Stock are entitled to receive, in preference to any dividend paid or declared and set aside for any junior stock, dividends at a per share price equal to the Series A Preferred Stock original issue price at an annual rate equal to 7% compounded annually. Holders of Series A Preferred Stock are entitled to cast the number of votes, rounded down to the nearest whole number, equal to the number of votes that would be attributable to the shares of common stock issuable upon conversion of such shares of Series A Preferred Stock, assuming conversion on the date applicable to the vote. In the event of a liquidation, dissolution or winding up of our company, each share of Series A Preferred Stock will be entitled to a payment as set forth in the Certificate of Designation of the Series A Preferred Stock. The Series A Preferred Stock is convertible, at any time after issuance, into common stock at the election of the holder into an amount of shares equal to (i) the product of the Series A Preferred Stock original price plus accrued but unpaid dividends on the shares being converted, multiplied by the number of shares of Series A Preferred Stock being converted, divided by (ii) a conversion price of $7.43 per share, subject to adjustment.

In addition, pursuant to its terms, all outstanding shares of Series A Preferred Stock will automatically convert immediately prior to the closing of this offering into [•] shares of common stock based on a conversion formula equal to the quotient of (i) the lesser of (x) $70,000,000 and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%. Accordingly, such shares of Series A Preferred Stock will no longer be outstanding following this offering.

Acquisition of TriGrow

On January 22, 2020 we completed the acquisition of all outstanding shares of TriGrow. TriGrow is an integrator and exclusive distributor of our premium indoor grow solutions for the indoor controlled agriculture marketplace. As part of the acquisition, we received TriGrow's 75% interest in TriGrow Brands, LLC, a licensor of an established portfolio of consumer brands that utilize our grow technology. The license of these brands is ancillary to the sale of our AVFUs and provides a means to differentiate customers' products in the marketplace. It is not a material aspect of our business and we have not realized any royalty income. Accordingly, we are currently evaluating whether to continue this legacy business from an operational standpoint, as well as from a legal and regulatory perspective. In consideration of TriGrow's shares, we issued to TriGrow's shareholders 942,028 shares of common stock. In addition, the closing conditions included the assumption of TriGrow's outstanding obligation to invest $1,140,000 (the "Funding Amount") in a form of a so called "Profit Interest" investment in CCI Finance, LLC ("CCI"). We included this investment as part of the consideration for the acquisition. We satisfied this obligation and made payment of the Funding Amount on January 24, 2020 pursuant to a Profits Interest Agreement with CCI. Under the Profits Interest Agreement, in return for our investment of the Funding Amount, CCI is obligated to share with us 28.5% of the net revenue generated from its equipment lease agreement with its customer, payable at least annually by CCI to us. The revenue sharing percentage is reduced from 28.5% to 20% once we have received payments equalling an 18% Internal Rate of Return on the Funding Amount (the "Preferred Return") prior to the fifth anniversary of the agreement. The revenue sharing terminates upon the later of five years, or our attainment of the Preferred Return. To date, no revenue has been generated and shared with us under this agreement. Assuming a five-year payback, the annual payments required to reach the Preferred Return would be $364,500. Assuming a seven-year payback, the annual payments required to reach the Preferred Return would be $299,000.

As part of the acquisition of TriGrow, we made available 192,251 shares of our common stock for issuance to certain executives of TriGrow upon TriGrow's and/or our receipt of $10,000,000 of accumulative purchase orders for TriGrow and/or our equipment, products, and services, for the period from November 21, 2019 through June 30, 2020 as a result of the efforts of the TriGrow executives. Such shares of common stock are to be distributed by us in our sole discretion to certain executives responsible for achievement of such milestone. We concluded that the earn-out, if materialized, will be considered as post combination services. Additionally, we concluded that the value associated with the earn-out to be de minimis. No earn-out was earned through June 30, 2020.

The purchase price for TriGrow was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values on the acquisition dates, with the remaining unallocated purchase prices recorded as goodwill. The fair value assigned to identifiable intangible assets acquired was determined primarily by using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by our management.

Transaction and related costs, consisting primarily of professional fees, directly related to the acquisition, totalled $45,000 for the nine months ended September 30, 2020. All transaction and related costs were expensed as incurred and are included in selling, general and administrative expenses.

The purchase price allocation for the business combination has been prepared on a preliminary basis and changes to those allocations may occur as additional information becomes available during the respective measurement period (up to one year from the acquisition date). Fair value still under review include values assigned to identifiable intangible assets and goodwill.

The following table sets forth the components and the allocation of the purchase price for the business combination:

Components of Purchase Prices:		
Obligation to invest cash in profit interest	$	1,140,000
Capital stock consideration		1,356,000
Noncontrolling Interest		207,000
Total purchase price	**$**	**2,703,000**
Allocation of Purchase Price:		
Net tangible assets:		568,000
Identifiable intangible assets:		
Brand rights		930,000
Customer relationships		850,000
Total identifiable intangible assets		1,780,000
Goodwill		355,000
Total purchase price allocation	**$**	**2,703,000**

Brand rights and Customer relationships were assigned estimated useful lives of ten years and nine years, respectively, the weighted average of which is approximately 9.5 years.

The amount of revenue of TriGrow included in our condensed consolidated statement of operations from the acquisition date of January 22, 2020 to September 30, 2020 was $4,000,000.

Acquisition of Harbor Mountain Holdings LLC

In July 2020, we acquired all the outstanding shares of Harbor Mountain Holdings LLC (“HMH”), located in the Atlanta, GA area, that has been producing and assembling many of our products. As part of the acquisition we waived net receivable owed amounting to $214,000 and assumed lease liabilities for existing equipment and premises. As part of the acquisition of HMH, we may issue stock options or shares of common stock (at our discretion), at a value of up to $100,000, to an executive of HMH upon achievement of certain milestones from the acquisition date through March 31, 2021, as a result of the efforts of the HMH executive. We concluded the earn-out, if materialized, will be considered as post business combination services. Additionally, we concluded that the value associated with the earn-out to be de minimis. No earn-out was earned through September 30, 2020.

The purchase price for this business combination was allocated by us to the tangible and intangible assets acquired and liabilities assumed based on its book value which estimated the fair values on the acquisition date, with the remaining unallocated purchase price recorded as goodwill.

Transaction and related costs, consisting primarily of professional fees, directly related to the acquisition, totalled $35,000 for the nine months ended September 30, 2020. All transaction and related costs were expensed as incurred and are included in selling, general and administrative expenses.

The following table sets forth the components and the allocation of the purchase price for the business combination:

Components of Purchase Price:	
Waiver of net receivable owed to Agrify	$ 214,000
Total purchase price	**$ 214,000**

Allocation of Purchase Price:	
Net tangible assets (liabilities):	
Cash	4,000
Property and Equipment	831,000
Accounts payable	(187,000)
Accrued expenses	(23,000)
Financing lease liabilities	(649,000)
Net tangible (liabilities):	(24,000)
Goodwill	238,000
Total purchase price allocation	$ 214,000

The amount of revenue of HMH included in our condensed consolidated statement of operations from the acquisition date of July 22, 2020 to September 30, 2020 was $0. The acquisition of HMH is not deemed material under applicable SEC rules and accordingly we do not consolidate the financial statements of HMH.

The following pro forma financial information summarizes the combined results of operations for us, TriGrow and HMH, as though the acquisition of TriGrow and HMH occurred on January 1, 2019.

The unaudited pro forma financial information was as follows:

	Nine months ended September 30,	
(In thousands)	**2020**	**2019**
Revenue, net	$ 7,766,000	$ 2,266,000
Net loss before non-controlling interest	$ 9,785,000	$ 5,425,000
Loss attributable to non-controlling interest	65,000	63,000
Net loss	$ 9,720,000	$ 5,362,000

The pro forma financial information for all periods presented above has been calculated after adjusting the results of TriGrow and HMH to reflect the business combination accounting effects resulting from these acquisitions, including acquisition costs and the amortization expense from acquired intangible assets as though the acquisition occurred on January 1, 2019. The historical consolidated financial statements have been adjusted in the pro forma combined financial statements to give effect to pro forma events that are directly attributable to the business combination.

The pro forma financial information is for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place on January 1, 2019.

Impact of coronavirus pandemic ("COVID-19")

In March 2020, the World Health Organization declared the outbreak of the COVID-19 virus a global pandemic. This outbreak is causing major disruptions to businesses and markets worldwide as the virus continues to spread. A number of countries as well as certain states and cities within the United States have enacted temporary closures of businesses, issued quarantine or shelter-in-place orders and taken other restrictive measures in response to COVID-19.

To date, although all of our operations are operating, COVID-19 has caused some disruptions to our business, such as some temporary delays in the delivery of our inventory, although recently we are no longer experiencing such delays. Although the ability of our suppliers to timely ship their goods has affected some of our deliveries, currently the difficulties experienced by our suppliers have not yet materially impacted our ability to deliver

products to our customers and we do not significantly depend on any one supplier. However, if this continues, it may negatively affect any inventory we may have and more significantly delay the delivery of merchandise to our customers, which in turn will adversely affect our revenues and results of operations.

The extent to which COVID-19 and the related global economic crisis, affect our business, results of operations and financial condition, will depend on future developments that are highly uncertain and cannot be predicted, including the scope and duration of the pandemic and any recovery period, future actions taken by governmental authorities, central banks and other third parties (including new financial regulation and other regulatory reform) in response to the pandemic, and the effects on our produce, clients, vendors and employees. We continue to service our customers amid uncertainty and disruption linked to COVID-19 and we are actively managing our business to respond to its impact.

Paycheck Protection Program Loan under the Coronavirus Aid, Relief, and Economic Security Act

On May 7, 2020, we entered into a Loan Agreement and Promissory Note (collectively, the "PPP Loan") with Bank of America pursuant to the Paycheck Protection Program (the "PPP") under the recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") administered by the U.S. Small Business Administration (the "SBA"). We received total proceeds of $779,000 from the unsecured PPP Loan. The PPP Loan is scheduled to mature on May 7, 2022 and has an interest rate of 1.00% per annum and is subject to the terms and conditions applicable to loans administered by the SBA under the CARES Act. The PPP Loan may be prepaid at any time prior to its maturity with no prepayment penalties.

The PPP Loan contains customary events of default relating to, among other things, payment defaults and breaches of representations and warranties. Subject to certain conditions, the PPP Loan may be forgiven in whole or in part by applying for forgiveness pursuant to the CARES Act and the PPP. The amount of loan proceeds eligible for forgiveness is based on a formula based on a number of factors, including the amount of loan proceeds used by us for certain eligible expenses, including payroll costs, rent payments on certain leases and certain qualified utility payments, provided that, among other things, at least 60% of the loan amount is used for eligible payroll costs, the employer maintaining or rehiring employees and maintaining salaries at certain level. In accordance with the requirements of the CARES Act and the PPP, we have used all of the proceeds from the PPP Loan primarily for payroll costs. We have not yet applied for forgiveness of this loan. We believe that we will be eligible for full forgiveness under the program, but there is no assurance that the full loan amount will be forgiven and we cannot anticipate the timing of any such forgiveness. If the principal amount is not forgiven in full, we would be obligated by May 7, 2022 to repay any principal amount not forgiven and interest accrued from May 7, 2020.

On July 27, 2020, Agrify Brands received a PPP Loan from Bank of America for total proceeds of $44,410. The PPP Loan is scheduled to mature on July 27, 2022, has an interest rate of 1.00% per annum and is subject to the terms and conditions mentioned above.

Convertible Promissory Notes and Warrants

On August 14, 2020, our board of directors approved the issuance of (i) convertible promissory notes (the "Notes") in the aggregate principal amount of $5,000,000 with an initial maturity date of one year following issuance (which may be extended by us in our sole discretion for an additional one year, referred to as the "Maturity Date Extension"), convertible at our option or the holder of the Notes upon an initial public offering or public listing into shares of common stock and (ii) five year warrants to purchase a number of shares of common stock equal to 10% of the principal amount of Notes purchased by the purchasers at an exercise price per share equal $0.01 (and warrants to purchase an additional number of shares of common stock equal to 10% of the principal amount of Notes purchased by the purchasers at an exercise price per share equal to $0.01 in the event the maturity date of the Notes is extended by us).

Solely in the event we determine to effectuate the Maturity Date Extension, the outstanding principal balance of the Notes shall bear interest, in arrears accruing as of the issuance date of the Notes, at a rate per annum equal to eight percent (8%). Interest shall be computed on the basis of a 360-day year of twelve 30-day months and shall be payable on the maturity date, as extended.

Immediately prior to the consummation of a public transaction, in which are becoming a reporting issuer in the United States (the "Public Transaction"), the outstanding principal amount of the Notes together with all accrued and unpaid interest shall convert, at our option or the holder of the Notes, into a number of fully paid and non-assessable shares of common stock equal to the quotient of (i) the outstanding principal amount of the Notes together with all accrued and unpaid interest hereunder immediately prior to such Public Transaction divided by (ii) the Conversion Price. The "Conversion Price" shall mean a price equal to the quotient of the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the Conversion Price shall be adjusted to equal the product of (a) the Conversion Price then in effect immediately prior to such adjustment and (b) 85%. In the event of a conversion upon Public Transaction, all shares of common stock issuable upon conversion of the Notes (at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms of the Notes), all outstanding shares of our Series A convertible preferred stock (at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms of Series A convertible preferred stock), and the exercise and/or conversion of any other outstanding convertible securities and options shall be deemed to be outstanding.

On September 30, 2020, our board of directors approved an increase to the maximum aggregate offering amount of the Notes to $10,000,000. On November 23, 2020, our board of directors approved a further increase to the maximum aggregate offering amount of the Notes to $13,500,000.

As of September 30, 2020, a total of $5,800,000 of Notes and warrants to purchase 580,000 shares of common stock were subscribed. Through September 30, 2020, the aggregate relative fair value of the warrants of $1,362,000 was recorded as debt discount at issuance and is being amortized over the term of the respective Notes.

During the nine months ended September 30, 2020, we determined that the Notes contained variable-share settlement features that represented derivative liabilities and contingent BCFs. The aggregate issuance date fair value of the variable-share settlement features was $1,160,000, which was recorded at issuance as a debt discount and is being amortized over the terms of the respective Notes. See the paragraph below — Derivative Liabilities — for additional details. During the nine months ended September 30, 2020, the contingently adjustable non-bifurcated, beneficial conversion features associated with the Notes were not resolved. Upon resolving such contingency we will estimate the intrinsic value of the beneficial conversion features based upon the difference between the fair value of the underlying common stock at the commitment date of the Note transaction and the adjusted conversion price embedded in the Notes.

Derivative Liabilities

During the nine months ended September 30, 2020, we recorded Level 3 derivative liabilities that were measured at fair value at issuance in the aggregate amount of $1,160,000 related to the variable-share settlement features of certain convertible notes payable. See previous paragraph– Convertible Promissory Notes for additional details. On September 30, 2020, we recomputed the fair value of the variable-share settlement features recorded as derivative liabilities to be $1,163,000. The loss on the change in fair value between the issuance date and September 30, 2020 was recorded to interest expense for the nine months ended September 30, 2020.

Use of Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include assumptions about collection of accounts and notes receivable, the valuation and recognition of stock- based compensation expense, valuation allowance for deferred tax assets and useful life of fixed assets and intangible assets.

Financial Overview

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial position and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP. The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. On an ongoing basis, we evaluate estimate, which include estimates related to accruals, stock-based compensation expense, and reported amounts of revenues and expenses during the reported period. We base our estimates on historical experience and other market-specific or other relevant assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from those estimates or assumptions.

Revenue Recognition

In accordance with Topic 606, we account for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which we are entitled. Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

We generate revenue from the following sources: (1) equipment sales and (2) services sales. We sell our equipment and services to customers under a combination of a contract and purchase order.

Equipment revenue includes sales from proprietary products designed and engineered by us such as vertical farming units, integrated grow racks, and LED grow lights, and non-proprietary products designed, engineered, and manufactured by third parties such as air cleaning systems and pesticide-free surface protection. For proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of royalties based on contractual percentage of the net selling price of any proprietary product sold by our customers. For non-proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of revenue share based on a contractual percentage of gross margin of any non-proprietary product sold by our customers. We do not offer a right of return for sales of equipment.

Service revenue includes sales from cloud-based solutions that allow customers to use hosted software over the contract period without taking possession of the software and are provided on a subscription basis with technical support. The transaction price is variable consideration in the form of a monthly fee determined at contract inception based on the total number of active software users. We offer service credits in those instances where software uptime does not meet predetermined performance thresholds.

Variable consideration in the form of royalties, revenue share, monthly fees, and service credits are estimated at contract inception and updated at the end of each reporting period if additional information becomes available. Variable consideration is typically not subject to constraint. Changes to variable consideration were not material for the periods presented.

We typically satisfy our performance obligations for equipment sales when equipment is made available for shipment to the customer. We typically satisfy our performance obligations for services sales as services are rendered to the customer.

We enter contracts that can include various combinations of equipment and services, which are generally capable of being distinct and accounted for as separate performance obligations.

We allocate total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price we would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

Other Policies and Judgments — We have elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfilment cost and not as a promised good or service. Accordingly, we will accrue all fulfilment costs related to the shipping and handling of consumer goods at the time of shipment. We have payment terms with our customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes we collect concurrent with revenue-producing activities are excluded from revenue.

Contract Balances — We receive payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of our deferred revenue primarily results from the timing difference between our performance and the customer's payment. We fulfil our obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. We recognize deferred revenue when we have received consideration or an amount of consideration is due from the customer and we have a future obligation to transfer certain proprietary products.

We generally provide a one-year warranty on its products for materials and workmanship but may provide multiple year warranties as negotiated, and will pass on the warranties from its vendors, if any, which generally covers this one year period. In accordance with ASC 450-20-25, we accrue for product warranties when the loss is probable and can be reasonably estimated. At September 30, 2020, we had no product warranty accrual our de minimis historical financial warranty experience.

Accounting for Business Combinations

We allocated the purchase price of acquired company to the tangible and intangible assets acquired, including in-process research and development assets, and liabilities assumed, based upon their estimated fair values at the acquisition date. These fair values are typically estimated with assistance from independent valuation specialists. The purchase price allocation process requires us to make significant estimates and assumptions, especially at the acquisition date with respect to intangible assets, contractual support obligations assumed, contingent consideration arrangements, and pre-acquisition contingencies.

Although we believe the assumptions and estimates we have made in the past have been reasonable and appropriate, they are based in part on historical experience and information obtained from the management of the acquired companies and are inherently uncertain.

Examples of critical estimates in valuing certain of the intangible assets we have acquired or may acquire in the future include but are not limited to:

- future expected cash flows from software license sales, support agreements, consulting contracts, other customer contracts, and acquired developed technologies;
- expected costs to develop in-process research and development into commercially viable products and estimated cash flows from the projects when completed;
- the acquired company's brand and competitive position, as well as assumptions about the period of time the acquired brand will continue to be used in the combined company's product portfolio;
- cost of capital and discount rates; and
- estimating the useful lives of acquired assets as well as the pattern or manner in which the assets will amortize.

The fair value assigned to identifiable intangible assets acquired during the nine months ended September 30, 2020, was determined primarily by using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by our management.

Income Taxes

We account for income taxes pursuant to the provisions of ASC Topic 740, "Income Taxes," which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred asset will not be realized.

We follow the provisions of ASC 740-10-25-5, "Basic Recognition Threshold." When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. We believe our tax positions are all highly certain of being upheld upon examination. As such, we have not recorded a liability for unrecognized tax benefits.

We recognize the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, "Basic Recognition Threshold" provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, we recognize the full amount of the tax benefit.

Accounting for Stock-Based Compensation

We follow the provisions of ASC Topic 718, "Compensation — Stock Compensation." ASC Topic 718 establishes standards surrounding the accounting for transactions in which an entity exchanges its equity instruments for goods or services. ASC Topic 718 focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions, such as options issued under our Stock Option Plans.

The fair value of each option is estimated on the date of grant using the Black-Scholes option-pricing model. This model incorporates certain assumptions for inputs including a risk-free market interest rate, expected dividend yield of the underlying common stock, expected option life and expected volatility in the market value of the underlying common stock.

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because our stock options and warrants have characteristics different from those of its traded stock, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of such stock options. The risk-free interest rate is based upon quoted market yields for United States Treasury debt securities with a term similar to the expected term. The expected dividend yield is based upon our history of having never issued a dividend and management's current expectation of future action surrounding dividends. We calculate the expected volatility of the stock price based on the corresponding volatility of our peer group stock price for a period consistent with the underlying instrument's expected term. The expected lives for such grants were based on the simplified method for employees and directors.

In arriving at stock-based compensation expense, we estimate the number of stock-based awards that will be forfeited due to employee turnover. Our forfeiture assumption is based primarily on its turn-over historical experience. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment will be made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in our financial statements. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment will be made to lower the estimated forfeiture rate, which will result in an increase to expense recognized in our financial statements. The expense we recognize in future periods will be affected by changes in the estimated forfeiture rate and may differ significantly from amounts recognized in the current period.

It is important that the discussion of our operating results that follows be read in conjunction with the critical accounting policies disclosed above.

Fair value of common stock

Historically, for all periods prior to this offering, the fair values of the shares of common stock underlying our share-based awards were determined on each grant date by our board of directors. Given the absence of a public trading market for our common stock, our board of directors exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our common stock, including our stage of development; the rights, preferences and privileges of our convertible preferred stock relative to those of our common stock; our financial condition and operating results, including our levels of available capital resources; equity market conditions affecting comparable public companies; general U.S. market conditions; and the lack of marketability of our common stock. Valuations of our common stock were prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation.

For our valuation performed on September 30, 2019, March 20, 2020 and September 14, 2020, we used the income and market methods to estimate our enterprise value under various financing scenarios based on the discounted cash flow approach and a market approach of comparable peer public companies. The estimated enterprise value under each method was then allocated to the common stock, discount for lack of marketability was applied, and the resulting value of common stock was probability-weighted across the various financing scenarios to determine the fair value of common stock.

The assumptions underlying these valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

After the completion of this offering, the fair value of each share of underlying common stock will be determined based on the closing price as reported on the date of grant on the primary stock exchange on which our common stock is traded.

Results of Operations

Comparison of the Nine Months Ended September 30, 2020 and 2019

The following table summarizes our results of operations for the nine months ended September 30, 2020 and 2019:

	Nine Months ended September 30,	
	2020	**2019**
Revenue, net	$ 7,734,000	$ 2,425,000
Cost of goods sold	6,874,000	2,716,000
Gross profit (loss)	860,000	(291,000)
OPERATING EXPENSES		
Research and development	2,392,000	31,000
Selling, general and administrative expenses	6,940,000	876,000
Total operating expenses	9,332,000	907,000
Operating loss	8,472,000	1,198,000
Interest expense, net	139,000	3,000
Net loss before non-controlling interest	8,611,000	1,201,000
Loss attributable to non-controlling interest	49,000	—
Net loss attributable to Agrify Corporation.	$ 8,562,000	$ 1,201,000

Revenues

Our goal is to provide our customers with a variety of products to address their entire needs. Our core product offering includes our Agrify Vertical Farming Units and Agrify Integrated Grow Racks with our Agrify Insights™ software, which in 2020 are supplemented with environmental control products, grow lights, and facility build-out services.

During the first quarter of 2020 and in parallel with the outbreak of the COVID-19 virus, we experienced a disruption in the supply chain that delay the delivery of several components necessary to the manufacturing of our Agrify Vertical Farming Units (or AVFUs) and as a result, delivery of several AVFUs was delayed to April 2020.

We generate revenue from sales of cultivation solutions, including ancillary products and services, Agrify Insights™ software and facility build-outs. We believe that our product mix form an integrated ecosystem which allows us to be engaged with our potential customers from early stages of the grow cycle — first during the facility build-out, to the choice of cultivation solutions and then running the grow business with our Agrify Insight software. We believe that delivery of each solution in the grow cycle will generate sales of additional solutions and services.

The following table provides a breakdown of our revenue for the nine months ended September 30, 2020 and 2019:

	Nine Months ended September 30,	
	2020	**2019**
Cultivation solutions, including ancillary products and services	$ 4,594,000	$ 2,406,000
Facility build-outs	3,019,000	—
Services	121,000	19,000
	$ 7,734,000	$ 2,425,000

Revenue from cultivation solutions and ancillary products for the first nine months of 2020 and 2019 were generated mainly from the delivery of 179 AVFUs to a customer in Washington state and 63 AVFUs to a customer in Colorado state, respectively. Revenue from delivery of cultivation solutions is one-time in nature and the number of AVFUs we delivered to each customer is ordered by the customer and designed to maximize its grow space. its grow space.

With the formation of our joint venture with Valiant-America in December 2019 through Agrify-Valiant, we added the facility build-outs to our products and services offering. We generated revenue from facility build-out services starting in the second quarter of 2020. We believe that combining facility build-out services with our other products will enhance the productivity of our AVFUs and benefit our customers.

Cost of Revenues

Cost of goods sold include direct cost of parts and outsourced assembly and installation services that are necessary for delivery of our products.

The following table provides a breakdown of our cost of revenue for the nine months ended September 30, 2020 and 2019:

	Nine Months ended September 30,	
	2020	**2019**
Cultivation solutions, including ancillary products and services	$ 3,945,000	$ 2,716,000
Facility build-outs	2,929,000	—
	$ 6,874,000	$ 2,716,000

During the first six months of 2020, we outsourced the manufacturing of our AVFUs to HMH, which we acquired in July 2020. Although the primary reason we acquired HMH was to expand our research, development and testing capabilities, the acquisition will also provide us with internal capabilities to manufacture small quantities of AVFUs and to reduce our cost of manufacturing. In addition, in December 2020, we entered into a five year supply agreement with Mack Molding Co. (“Mack”) pursuant to which Mack will become a key supplier of our AVFUs. We believe the supply agreement with Mack will provide us with increased scaling capabilities and the ability to more efficiently meet the potential future demand of our customers.

Gross Profit

Our gross profit represents total revenue less the cost of goods sold, and gross margin is gross profit expressed as a percentage of total revenue. For the nine months ended September 30, 2020, our gross profit was $860,000 compared to a loss of $291,000 for the nine months ended September 30, 2019.

The increase in gross profit was primarily related to (i) the aforementioned increase in net sales and (ii) a significant increase in our gross profit margin percentage (gross profit as a percentage of net sales). Our gross profit margin percentage increased to 11.1% for the nine months ended September 30, 2020 compared to a loss of 12.0% in the same period in 2019. The higher gross profit margin percentage is primarily due to higher negotiated prices on our products and a more favorable sales mix of proprietary and exclusive branded products. The acquisition of TriGrow in January 2020 allows us to sell our products directly to end customers and to generate higher gross profits. We expect that our marketing efforts aimed at driving demand and expanding our customer base, combined with our cost reduction initiatives, will result in higher gross margins in the future.

Research and Development Expenses

Research and development expenses consisted primarily of costs incurred for the development of Agrify Insight and next generation VFUs, which includes:

- employee-related expenses, including salaries, benefits, and travel;
- expenses incurred by subcontractor under agreements to provide engineering work related to the development of our next generation VFUs;
- expenses related to our facilities, depreciation, and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance and other supplies.

We did not have any significant research and development operation during the first nine months of 2019. For the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019, research and development expenses were $2,392,000 and $31,000, respectively. The increase of $2,360,000 is primarily attributable to payroll and related expenses of approximately $874,000, consulting fees of $441,000, and to halted development of hardware solution for deployment of rapid grow solution of $739,000, discarded research and development center in Colorado of $107,000, expenses related to grant of stock options in the amount of $121,000 and increase in hired employees and consultants for research and development activities.

As a percentage of net revenue, research and development expenses represented were 30.9% from total revenue for the nine months ended September 30, 2020, compared to 1.3% for the nine months ended September 30, 2019. We expect to continue to invest in future developments of our AVFUs and Agrify Insights™ and accordingly expect that research and development expenses for fiscal year 2020 will be increased. However, when measured as a percentage from net revenue, we believe that research and development expenses will decrease due to an increase in our total revenue.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of salaries and related costs for personnel, including stock-based compensation and travel expenses, in selling, executive and other administrative functions. Other general and administrative expenses also include professional fees for legal, consulting and accounting services as well as facility related costs.

For the nine months ended September 30, 2020 compared to the nine months ended September 30, 2019, general and administrative expenses were $6,940,000 and $876,000, respectively. The increase is attributable mainly to payroll and related expenses of approximately $2,525,000, grant of stock options in the amount of $585,000, expenses of $856,000 related to our efforts to become publicly listed, marketing expenses of approximately $376,000, professional service fees of approximately $438,000, depreciation and amortization expenses of approximately $270,000, travel and entertainment expenses of approximately $120,000, legal expenses of approximately $170,000 and legal costs related to our merger and acquisition activity of $80,000. The remaining increase is attributable to our office lease and other administration expenses. To support our long-term growth plan and our initial public offering, we undertook several initiatives in the second half of 2019 and early 2020 which

resulted in higher compensation costs, consulting fees and audit/legal fees, including, but not limited to, the hiring of executives such as our new Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and General Counsel, and engaging new professionals such as an auditor, law firm and several accounting and audit-related consultants.

We have granted stock options to officers, directors and employees which have several vesting conditions, including an event-based vesting acceleration (defined as a change in control, including an initial public offering). A change in control, including the consummation of this offering, would trigger a significant event-based stock compensation charge in the quarter during which this offering is completed. If this offering is consummated during the fourth quarter of 2020, the estimated share-based compensation cost for stock options granted as of September 30, 2020 would be approximately $1,000,000.

Interest (income) Expense, net

Interest expense was $139,000 for the nine months ended September 30, 2020 compared to $3,000 for the nine months ended September 30, 2019, reflecting an increase of $136,000.

The increase in interest expense is attributable mainly to the amortization of debt discount related to the issuance of convertible promissory notes in the amount of $87,000 and interest-bearing accounts in the amount of $53,000.

Loss attributable to non-controlling interest

We consolidate the results of operations of two less than wholly-owned entities into our consolidated results of operations. On December 8, 2019, we formed Agrify Valiant LLC, a joint-venture limited liability company in which we are 60% majority owner and Valiant-America, LLC owns 40%. Agrify Valiant LLC started its operations during the second quarter of 2020. On January 22, 2020, as part of the acquisition of TriGrow, we received TriGrow's 75% interest in Agrify Brands, LLC (formerly TriGrow Brands, LLC), a licensor of an established portfolio of consumer brands that utilize our grow technology. The license of these brands is ancillary to the sale of our AVFUs and provides a means to differentiate customers' products in the marketplace. It is not a material aspect of our business and we have not realized any royalty income. Accordingly, we are currently evaluating whether to continue this legacy business from an operational standpoint, as well as from a legal and regulatory perspective.

Loss attributable to non-controlling interest represents the portion of profit (or loss) that are attributable to non-controlling interest calculated as a product of the net income of the entity multiplied by the percentage of ownership held by the non-controlling interest.

Comparison of the Year Ended December 31, 2019 and 2018

The following table summarizes our results of operations for the year ended December 31, 2019 and 2018:

	Years ended December 31,	
	2019	**2018**
Revenue, net	$ 4,088,000	$ 1,769,000
Cost of goods sold	4,333,000	1,547,000
Gross profit (loss)	(245,000)	222,000
OPERATING EXPENSES		
Research and development	109,000	17,000
Selling, general and administrative expenses	2,737,000	1,221,000
Total operating expenses	2,846,000	1,238,000
Operating loss	(3,091,000)	(1,016,000)
Miscellaneous income, net	49,000	2,000
Net loss	$ (3,042,000)	$ (1,014,000)

Revenues

We had limited revenues from operations in each of the last two fiscal years. Through 2018 and 2019, we concentrated our business with TriGrow, acting as our exclusive distributor. Our revenues were generated from cultivation solutions and ancillary products from the delivery of 135 AVFUs to three of TriGrow's customers in Nevada and Colorado in the total amount of $4,088,000 for the year ended December 31, 2019 compared to delivery of 78 AVFUs to one of TriGrow's customers in Nevada in the total amount of $1,769,000 for the year ended December 31, 2018. During January 2020, we acquired TriGrow and began selling our products directly to end customers. In connection with our acquisition of TriGrow in January 2020, we inherited the three customers noted above along with one other legacy end-user customer who had purchased AVFUs through TriGrow. One of these customers took delivery of our AVFUs in 2020, for which we recognized revenue within the first nine months of 2020. After the acquisition, as we ramped up our sales force and transitioned to selling our cultivation solutions directly, we focused our sales efforts on a wide variety of other potential customers, including the customers that are reflected in our qualified pipeline. Although the revenue recognized from one of these legacy customers during the first nine months of 2020 constituted a substantial majority of our revenue during this transition period following the TriGrow acquisition, we expect that these legacy customers collectively will have a de-minimus contribution to our revenues going forward. For example, none of these legacy customers are included in our qualified pipeline. Our business is not substantially dependent on any of these customers and the loss of any of such customers, individually or collectively, would not have a material adverse effect on our business.

Cost of Revenues

Cost of goods sold include direct cost of parts and outsourced assembly and installation services that are necessary for delivery of our products. Our cost of revenues was $4,333,000 for the year ended December 31, 2019 compared to $1,547,000 for the year ended December 31, 2018. As we increased the production in 2019, we experienced higher costs of revenues are related to shipping and outsourced assembly costs. We expect to develop internal assembly capabilities and negotiate lower prices with parts manufacturers and therefore we expect that the costs of our AVFUs, as a percentage of revenue, will decrease in the future.

Gross Profit

Our gross profit represents total revenue less the cost of goods sold, and gross margin is gross profit expressed as a percentage of total revenue. For the year ended December 31, 2019, our gross loss was $245,000 compared to a gross profit of $222,000 for the year ended December 31, 2018. As described above, we expect to generate positive gross margin in the future.

Research and Development Expenses

Research and development expenses consisted primarily of costs incurred for the development of Agrify Insight and next generation AVFUs, which includes:

- employee-related expenses, including salaries, benefits, and travel;
- expenses incurred by subcontractor under agreements to provide engineering work related to the development of our next generation AVFUs;
- expenses related to our facilities, depreciation, and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance and other supplies.

For the year ended December 31, 2019 compared to the year ended December 31, 2018, research and development expenses were $109,000 and $17,000, respectively. The $92,000 increase is primarily attributable to the increase in hired employees and consultants for research and development activities. Our research and development expenses during fiscal years 2019 and 2018 were minimal and we expect such expenses to increase during fiscal year 2020.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of salaries and related costs for personnel, including stock-based compensation and travel expenses, in selling, executive and other administrative functions. Other general and administrative expenses also include professional fees for legal, consulting and accounting services as well as facility related costs.

For the year ended December 31, 2019 compared to the year ended December 31, 2018, general and administrative expenses were $2,737,000 and $1,221,000, respectively. The $1,516,000 increase is primarily attributable to professional expenses and consultants of approximately $438,000, marketing expenses of $414,000, grants of stock options in the amount of $109,000, salary and related expenses related to an increase in hired employees of $158,000, travel and entertainment expenses of approximately $88,000, legal expenses of approximately $60,000 and technology subscription expenses of $103,000. The remaining increase is attributable to office lease and other administration expenses.

Other Income (Expense)

Other income consisted primarily of interest income charged to our customers for late payments and bank fees expenses.

Net Loss

Our net loss for the year ended December 31, 2019 was $(3,042,000) compared with a net loss of $(1,014,000) for the year ended December 31, 2018. The net loss is influenced by the matters discussed in the other sections of the Management Discussion and Analysis.

Liquidity and Capital Resources

Our ability to continue as a going concern is dependent on our ability to raise additional capital and implement our business plan until we generate sufficient cash from operating activities to support our investment and financing needs. Since our inception, we have been funded by revenues from operations and investments in our company.

As of September 30, 2020, we had $4,958,000 of cash. We believe that our cash, cash resulting from the issuance of our 2020 convertible promissory notes, cash resulting from the public offering and cash flows from operations will be sufficient to support our planned operations for at least the next 12 months. Our current working capital needs are to support accounts receivable growth, manage inventory to meet demand forecasts and support operational growth. Our long-term financial needs primarily include working capital requirements and capital expenditures. There are many factors that may negatively impact our available sources of funds in the future, including the ability to generate cash from operations, raise debt capital and raise cash from the issuance of our securities. The amount of cash generated from operations is dependent upon factors such as the successful execution of our business strategy and general economic conditions.

We may opportunistically raise debt capital, subject to market and other conditions. Additionally, as part of our growth strategies, we may also raise debt capital for strategic alternatives and general corporate purposes. If additional financing is required from outside sources, we may not be able to raise such capital on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition may be adversely affected.

Indebtedness

We received the PPP Loans with Bank of America pursuant to the PPP under the CARES Act administered by the SBA. We received total proceeds of $823,410 from the unsecured PPP Loans which are scheduled to mature during 2022. Subject to certain conditions, the PPP Loan may be forgiven in whole or in part by applying for forgiveness pursuant to the CARES Act and the PPP. We have not yet applied for forgiveness of the PPP Loan and although we believe that we will be eligible for full forgiveness under the PPP, there is no assurance that the full PPP Loan amount will be forgiven and we cannot anticipate the timing of any such forgiveness. If the principal amount is not forgiven in full, we would be obligated to repay any principal amount not forgiven and interest accrued thereon.

Cashflow

The following table presents the major components of net cash flows from and used in operating, investing and financing activities for the nine months ended September 30, 2020 and for years ended December 31, 2019 and 2018:

	September 30, 2020	December 31, 2019	December 31, 2018
Cash (used in) provided by:			
Operating Activities	$ (10,723,000)	$ (3,441,000)	$ 49,000
Investing Activities	$ (1,195,000)	$ (184,000)	$ —
Financing Activities	$ 16,670,000	$ 3,746,000	$ —

Cashflow from Operating Activities

For the nine months ended September 30, 2020, we realized net loss of $8,562,000, which includes non-cash expenses of $261,000 related to depreciation and amortization, $803,000 in connection with the issuance of stock options, non-cash interest expenses of $95,000 related to the issuance of notes payable and $119,000 from the disposal of fixed assets, partially offset by loss attributed to non-controlling interest in the amount of $49,000. Net cash was reduced by a $622,000 increase in accounts receivable, a $1,673,000 increase in prepaid inventory due to demand forecast, a $2,099,000 decrease in deferred revenue, partially offset by $507,000 increase in accrued expenses, a $42,000 decrease in prepaid expenses, and a $455,000 increase in accounts payable.

For the year ended December 31, 2019, we realized net loss of $3,042,000, which includes non-cash expenses of $10,000 related to depreciation and amortization, and $109,000 in connection with issuance of stock options. Net cash was reduced by a $369,000 increase in inventory due to demand forecast, a $366,000 increase in prepaid expenses and other receivables, and an $833,000 decrease in accounts payable, partially offset by a $355,000 increase in accrued expenses, and a $695,000 increase in deferred revenue.

For the year ended December 31, 2018, we realized net loss of $1,014,000, which includes non-cash interest expense of $11,000. Net cash was increased by an $841,000 increase in accounts payable, and a $1,022,000 increase in deferred revenue, partially offset by a $845,000 increase in inventory due to demand forecast.

For the nine months ended September 30, 2020 and for the years ended December 31, 2019 and 2018, depreciation and amortization expense was $261,000, $10,000, and $0, respectively. We anticipate that our depreciation and amortization expense will increase in fiscal 2020 due to expected capital expenditures in fiscal 2020 on property and equipment to expand research, development and testing capabilities.

For the nine months ended September 30, 2020 and for the years ended December 31, 2019 and 2018, compensation in connection with issuance of stock options was $803,000, $109,000, and $0, respectively. As of September 30, 2020, there was $2,036,000 of total unrecognized compensation cost related to unvested options granted under our options plans, which will be expensed through fiscal 2024.

To support our long-term growth plan and our proposed initial public offering, during fiscal year 2019 and the first nine months of 2020, we hired employees and executives, invested in research and development and sales and marketing activities, and increased our inventory. While creating a net loss and negative cash flow from operations, these activities laid the foundation that resulted in our current sales backlog and qualified pipeline.

Cashflow from Investing Activities

Net cash used in investing activities relates to capital expenditures to support growth and investment in property and equipment, to expand research, development and testing capabilities, and to a lesser extent, the replacement of existing equipment.

For the nine months ended September 30, 2020, net cash used in investing activities was $1,195,000, which includes $1,092,000 paid in connection with the acquisition of TriGrow and $103,000 cash outflow for purchasing computer equipment and small machinery.

For the year ended December 31, 2019, net cash used in investing activities was $184,000 and consisted of a $143,000 investment in our website domain and trademark, and a $41,000 cash outflow for purchasing computer equipment and small machinery.

We did not have any investment activities in the year ended December 31, 2018.

Cashflow from Financing Activities

For the nine months ended September 30, 2020, net cash provided by financing activities was $16,670,000, primarily attributable to the $10,000,000 proceeds from the issuance of our Series A Preferred Stock, $5,800,000 proceeds from the issuance of notes payable and the $823,000 PPP Loan under the CARES Act.

For the year ended December 31, 2019, net cash provided by financing activities was $3,746,000, consisting of $3,879,000 in capital contributions resulting from the issuance of our common stock to an investor, partially offset by a $133,000 repayment of a loan from a related party.

We did not have any financing activities in the year ended December 31, 2018.

Contractual Obligations

At September 30, 2020, our contractual obligations were as follows:

		Payments Due by Period			
	Total	**< 1 year**	**1 – 3 years**	**3 – 5 years**	**> 5 years**
Notes Payable, derivative liability and long-term debt	$ 5,356,000	$ 4,963,000	$ 393,000	$ —	$ —
Short term lease obligations	66,000	66,000	—	—	—
Finance lease obligations	729,000	190,000	344,000	167,000	28,000
Purchase obligations	1,351,000	1,351,000	—	—	—
Total contractual obligations	**$ 7,502,000**	**$ 6,570,000**	**$ 737,000**	**$ 167,000**	**$ 28,000**

Our purchase obligations are associated with agreements for purchases of goods or services generally including agreements that are enforceable and legally binding and that specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum, or variable price provisions; and the approximate timing of the transactions. Agreements to purchase goods or services that have cancellation provisions with no penalties are excluded from these purchase obligations. Upon completion of this offering, the notes payable will be converted into shares of our common stock.

BUSINESS

Overview

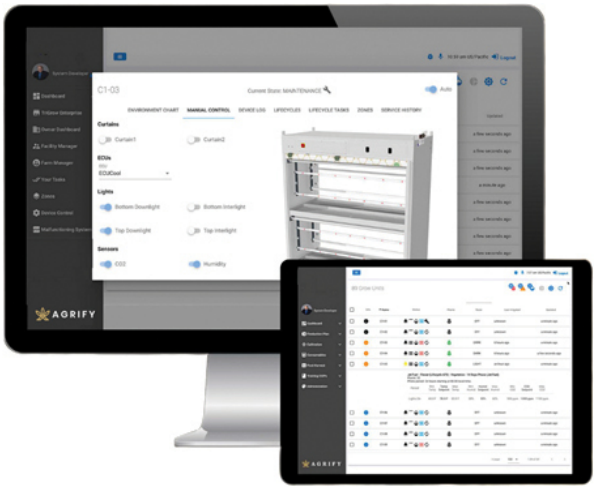
We are a developer of highly advanced and proprietary precision hardware and software grow solutions for the indoor agriculture marketplace. We believe we are the only company with an automated and fully integrated grow solution in the indoor agriculture industry. We believe our *Agrify "Precision Elevated™"* cultivation solution is vastly differentiated from anything else on the market in that it combines our seamlessly integrated hardware and software offerings with a wide range of associated services such as consulting, engineering, and construction to form what we believe is the most complete solution available from a single provider. The totality of our product mix and service capabilities form an integrated ecosystem in what has historically been an extremely fragmented market for the various components needed for indoor agriculture. As a result, we believe we are well situated to create a dominant market position in the indoor agriculture sector.

Despite the fact that the indoor agriculture space is rapidly growing, our grower customers face some significant obstacles to their operations (such as lack of standard operating procedures, poor ventilation and air circulation, disease and pest mitigation and unutilized vertical space) that pose a serious threat to their long-term profitability. We believe that our turnkey, fully integrated Agrify "Precision Elevated™" cultivation solution is the key to resolving many of the challenges our customers encounter. With years of indoor agriculture industry experience and extensive domain expertise, our team is able to work closely with cultivators across various commercial segments including fruits, vegetables, hemp and cannabis. While we do not cultivate, come in contact with, distribute or dispense cannabis or any cannabis derivatives that are currently prohibited under United States federal law, our cultivation solutions can be used within indoor grow facilities by cannabis cultivators.

Not only do we provide our valued customers with the tangible benefit of working with a single provider in what has historically been a decentralized market full of piecemeal solutions that were not necessarily designed and engineered to work harmoniously with one another, we have also elevated the entire indoor growing experience. Through our cutting-edge grow solutions, we believe we give our customers the tools they need to operate their facilities with more precision, consistency and increased yields while helping them achieve higher returns on investments in equipment such as ours. Our goal is always to enable our customers to consistently produce the highest quality products at the lowest cost possible.

We have generated significant momentum in the U.S. market with our proprietary Agrify "Precision Elevated™" cultivation solution, which is the result of extensive research and development, and we expect to have significant expansion opportunities over time both domestically and globally. We have set ourselves apart by bringing to market this technologically savvy, bundled solution of equipment, software and services that is turnkey, end-to-end, fully integrated and optimized for precision growing. As we continue to accelerate our growth, we have started taking pre-orders for the newest version of our flagship hardware product, version 3.5 of the *Agrify Vertical Farming Unit (AVFU)*, as well as our proprietary SaaS product, *Agrify Insights™*.

The Agrify Vertical Farming Unit



Agrify Insights™

Our core business model includes substantial equipment sales for the AVFUs as well as recurring SaaS revenues from our customers' use of Agrify Insights™, as our software is licensed by customers through a subscription that allows us to charge monthly fees for its continued use. Additionally, we are able to drive even more revenue and new business through our service offerings and complementary products. All of our AVFU-related revenue has come from sales of the first three generations of our AVFU, which has substantially similar functionality as the AVFU version 3.5. We have also been selling LED lights, a small amount of environmental threat mitigation products from Bluezone and Enozo and other grow and ancillary equipment. We started 2020 with a backlog of $4 million and during the first six months of 2020 we received additional bookings of $36.9 million in the form of purchase orders or purchase commitments. We recognized revenue of $7.7 million during the first nine months of 2020, and expect to recognize revenue of approximately 75% from the remaining backlog of $29.2 million by June 2021 and the rest gradually thereafter. As of October 28, 2020, we have $121 million of carefully vetted potential sales opportunities (which we refer to as our qualified pipeline). Of this, $53 million of qualified pipeline was generated through our company directly and $68 million through our Agrify-Valiant Joint-Venture. We are presently working to convert this pipeline into confirmed bookings over the next 12 months.

We place a heavy emphasis on the qualification process to ensure that all active opportunities in our qualified pipeline have been meticulously vetted. The resulting qualified pipeline is a byproduct of the due diligence investigation we conduct to get to know our potential customers. We believe our consultative sales process helps us ensure that our prospective buyers would significantly benefit from our solutions, and that they have all the means (or a concrete plan to acquire the means) necessary to make a purchasing decision within 12 months. Key vetting criteria in our due diligence analysis includes the potential customer's financial resources, its ability to identify and secure a suitable facility site, and the likelihood it will be able to obtain all of the necessary local and state provisional licenses. Our qualified pipeline is intended to show only the opportunities that we expect to close within a 12-month period. All other opportunities are engaged in our sales funnel. Although we have a high level of confidence that our qualified pipeline will translate into bookings over the next 12 months, there can be no assurance that we will be successful in such pursuits.

We target large scale high-value enterprise sales versus high-volume sales, and we believe that we will be able to significantly scale our business in the coming years without needing to significantly increase our headcount. Additionally, three of our last four purchase orders or purchase commitments (all of which were secured during 2020) have been for between $7.2 million and $11.1 million, and we expect that our average contract size will increase over time as well as we begin to partner with larger facilities that require more equipment and services. We have also recently unveiled new capabilities and partnerships around facility design, engineering, construction, and equipment financing. Ultimately, we are confident that our ability to support our customers with a full range of indoor grow solutions and services should position us to be the provider of choice in the market.

We also believe that the development of stronger business, operational and compliance practices across indoor agriculture in general is inevitable as the sector continues to evolve and mature, making our integrated, turnkey solution even more attractive to customers. We have witnessed firsthand that indoor agriculture facilities are becoming more sophisticated business enterprises that seek innovative technologies like ours, as well as well-honed business and operational processes, to produce at scale, high-quality products with consistency that meet the growing demand and needs of end users. Through our Agrify "Precision Elevated™" cultivation solution, our customers gain the ability and huge advantage to create consistent high-quality products with repeatability across all of their operations, wherever located, similar to any other consumer product company such as branded food or drink product companies.

Our Competitive Strengths

We believe our business has, and our future success will be driven by, the following competitive strengths:

- ***Innovative Technology in an Attractive Growing Industry***. Our innovative solutions are aimed at large and growing U.S. domestic and global markets. We believe we are the only provider of a fully integrated end-to-end hardware and software turnkey solutions for indoor cultivation facilities that allows customers to produce, at scale, high-quality products with consistency that meet the growing demand and needs of end users at a relatively low cost. As such, we believe we have a first mover advantage due to innovating this new type of precision cultivation solution, which is already designed, manufactured and implemented in a number of commercial scale deployments across multiple states within the U.S.

- ***Integrated Proprietary Components.*** We design and create our own hardware, software and standard operating procedures (SOPs) from the ground up, rather than buying piecemeal from third parties. We take a systems-engineered integrated approach that we believe has inherent advantages over other, ad-hoc systems.

- ***Emphasis on Precision and Consistency Through Our Proprietary Grow Solutions.*** While being able to help our customers increase capacity, yield and consequently revenues holds a tremendous amount of value, we believe that our biggest differentiator is our ability to impact the actual quality and consistency of the output by controlling the environment in which the crops are grown and all of the variables that influence harvests with an unparalleled level of precision. The byproduct of our Agrify "Precision Elevated™" cultivation solution is that our customers are able to create consistent high-quality products with repeatabililty from anywhere similar to any other consumer product company that provides a branded food or drink product.

- ***Market Knowledge and Understanding.*** We have extensive experience with controlled agriculture environments and scale-up manufacturing, as well as industry technical knowledge and relationships. We are keenly aware of the struggles that indoor cultivators face, and we serve as a credible and collaborative partner through the entire customer lifecycle. We believe that our fully integrated turnkey grow solutions and ancillary services are the key to resolving many of the challenges our customers face.

- ***Differentiated Business Model.*** Unlike many of our competitors, we offer a diversified mix of hardware, software and services, which leads to multiple revenue streams. Given the nature of our deployments, we become deeply embedded in our customers' operations through the sale of our AVFUs, and this puts us in a position where their success is directly tied to our equipment. By generating substantial AVFU hardware sales, we end up forming a large installed user base for future high-margin and stable recurring SaaS revenues via our Agrify Insights™ software.

- ***Strategic Investment from and Deep Integration with Large Asian Manufacturer.*** Our shareholder base includes Inventronics, which is based in Hangzhou, Zhejiang, China, and the founder of Inventronics is a member of our board of directors. Inventronics is currently one of the largest companies in the world engaged in the design and manufacture of high efficiency, high reliability and long-life LED drivers, and Inventronics has worked with us to develop our LED lighting technology. In 2016, Inventronics became a public company in China and currently has factories in China, India and Mexico. Although we are not a party to a definitive agreement that governs our relationship with Inventronics, we believe our long-term relationship with this large manufacturer will allow us to the most advanced LED driver technology into our products and gain research and development support for any custom power supply needs that we have. It also should lead to a reduction in our manufacturing costs by allowing us to procure competitively priced power electronics, which are critical to the operation of our LED lights and AVFUs. In addition, Inventronics provides access to component suppliers and contract manufacturing located in Asia, which we would be unable to reach directly.

- ***Joint Venture with Experienced Consulting and General Contractor of Industrial Facilities.*** We formed a joint venture with Valiant-America in December 2019 recognizing that it has a particular specialization and expertise in the development of indoor farming facilities. With general contracting, electrical, plumbing and HVAC licenses in Massachusetts, New York, New Jersey, Connecticut, New Hampshire, Rhode Island and Florida, as well as strategic partners in California, Nevada, Colorado and Texas, Valiant-America has developed approximately 2.8 million square feet of indoor cultivation space across 78 projects and 43 clients, including some of the leading multi-state operators. Valiant's qualified professionals possess a deep working knowledge of our grow systems and how to integrate our offerings when developing cultivation facilities. We believe being able to provide a full suite of technology products and services to our customers helps to embed us with these customers and enables us to become mission critical to their operations.

- ***Novel Equipment Financing Solution.*** Limited access to outside capital is a significant issue for cultivators as it can inhibit growth and cultivation facility expansion. We help solve this problem by offering equipment financing plans for select good credit customers, which we believe further enables us to become a vendor of choice. Qualified customers pay approximately 30% – 50% upfront and finance the balance through a two-year payment plan.

- ***Experienced and Proven Management Team.*** Our leadership team has entrepreneurial experience, technical expertise and a track record of scaling up businesses and operating public companies. Additionally, our team is supported by strong advisors and leading strategic and institutional investors.

Indoor Agriculture Industry Overview

The demand for indoor agriculture has been growing at a rapid pace throughout the world (particularly in our target market in the U.S.), and presents significant opportunities for companies like ours that leverage technology, services and experience to accelerate our growth and capture additional market share. According to an analysis conducted by Research and Markets, the global indoor farming market (excluding cannabis) was valued at $114 billion in 2019, and is projected to reach $139 billion by 2025, representing a CAGR of 3.4%.

There are a variety of factors that have created this major shift toward indoor farming, including unpredictable climate conditions, increased urbanization and the use of pesticides. Additionally, crops grown in indoor facilities generally attract the highest prices in the market as the ability to control environmental variables typically leads to higher quality production. Furthermore, technology innovations within the broader agriculture industry are enabling the indoor sector of the market to expand. According to MarketsandMarkets™ Indoor Farming Technology Report, the indoor farming technology market was valued at $31 billion in 2019, and is projected to reach $53 billion by 2025, representing a CAGR of 9.65%.

Indoor farms grow a wide variety of crops including leafy greens, tomatoes, cannabis, hemp, flowers, microgreens and herbs. These crops have historically been good crops to grow indoors because they generate high revenues and/or have quick growth cycles. These attributes help offset the fact that it can be costly to operate an indoor facility. Even with these dynamics, we believe that our products and solutions mix can significantly push down our customers' OpEx over time. One of the biggest advantages of indoor farming is its higher predictability and yield potential when compared with conventional farming. By working with enclosed and controlled facilities, farmers no longer need to contend with harsh environmental conditions, so they can grow a crop from seed to harvest in less time, realize higher yields in each cycle, and repeat the harvest more times in a given year.

Within the indoor agriculture space, there has been a big push to leverage the power of vertical farming and technology to further improve production in novel ways. Vertical farming is a transformative approach to cultivation that is used to produce various foods and medicinal plants in vertically stacked layers such as in open warehouses or shipping containers. Our products are designed specifically to serve the vertical farming market.

According to Allied Market Research, the global vertical farming market size was valued at $2.23 billion in 2018, and is projected to reach $12.77 billion by 2026, representing a CAGR of 24.6% from 2019 to 2026. Global Market Insights is even more bullish on this sector as they are expecting the global vertical farming market to experience a massive CAGR of 27.77% between 2019 and 2026, taking the value from $3.16 billion in 2018 to $22.07 billion by 2026. The demand for vertical farming is expected to increase rapidly due in large part to the rise in popularity of organic food as well as the lessening of legal and regulatory restrictions around cannabis and hemp.

One of the main drivers behind the increased prominence of vertical farming is that the vertically stacked structure of these farms reduces the need for additional construction activity and land. However, a high level of initial capital is often required for setting up the indoor vertical structure with all of the necessary lighting and irrigation systems. This is something we have been very mindful of when designing (and as we continue to improve) our products as well as when we launched our new architectural, engineering, consulting and construction services and our new product financing program.

While the ability to use previously untapped vertical space for cultivation offers tremendous upside for an existing facility, the advent of cutting-edge technological solutions like ours should help indoor growers push the boundaries of what is possible to an even greater extent. Indoor growers are now relying on technology to help them increase plant yields, generate higher revenues, manage operations and improve crop quality, and our products and services are geared directly towards satisfying the technology needs of our customers.

According to the State of Indoor Farming 2017 report by Agrilyst (now known as Artemis), which incorporated feedback and insights from over 150 indoor growers throughout the world as well as research from Cornell University, small farms (which were defined as less than 10,000 square feet) on average have an annual budget of $7.68 per square foot to invest in technology and large farms (which were defined as at or above

10,000 square feet) on average spend about $9.34 per square foot on technology to foster an environment where they can produce more with less. As a result, we believe there is clearly a demonstrated willingness to spend on integrating technological solutions into the way indoor farms are structured both now and in the future to help those operators achieve many of their financial-related goals around increasing revenues and decreasing costs.

In polling a wide variety of indoor cultivators, Artemis discovered that "automation tops the list of technologies growers are most excited about. Second to automation is HVAC (heating, venting, and air conditioning) equipment. Third was a tie between data analytics, LED lighting, and sensors." With the high cost of labor, it is no surprise that automation, which is a big part of our value proposition, ranked number one in this poll as most progressive growers are thinking strategically about what aspects of their business can be delegated to technological solutions instead of expensive personnel. Technology is driving significant change in the agriculture industry and will enable growers to enhance margin and institutionalize the process in which they grow.

One of the ancillary benefits of this increased emphasis on technology is that it is giving indoor cultivators the confidence to expand their footprint. In fact, 84% of the farms that participated in the Artemis study reported that they are planning to expand their facilities in the five years spanning 2018 to 2022. More importantly, their growth plans were quite ambitious as they indicated they will be adding 22.3 million square feet of growing area. A lot of this expansion is being spearheaded by leafy greens growers as they expect to augment their existing operations with 15 million square feet in new growing area.

We believe our team, strategy and "Precision Elevated™" cultivation solution have all evolved to meet the needs of indoor growers and capitalize on all of the growth that is expected throughout our total addressable market over the next decade.

Well-Established Crop Market Opportunities

With the right equipment, setup and configuration, cultivators can grow almost anything within an indoor vertical farm. With so many options at their fingertips, farmers face a huge opportunity cost when deciding what to grow and how to grow it. Even if a certain crop is biologically viable in an indoor setting, it may not be commercially viable. Consequently, there are a number of important factors including equipment, processes and economics that drive cultivators to narrow their focus to a small subset of crops that are the most conducive to long-term profitability.

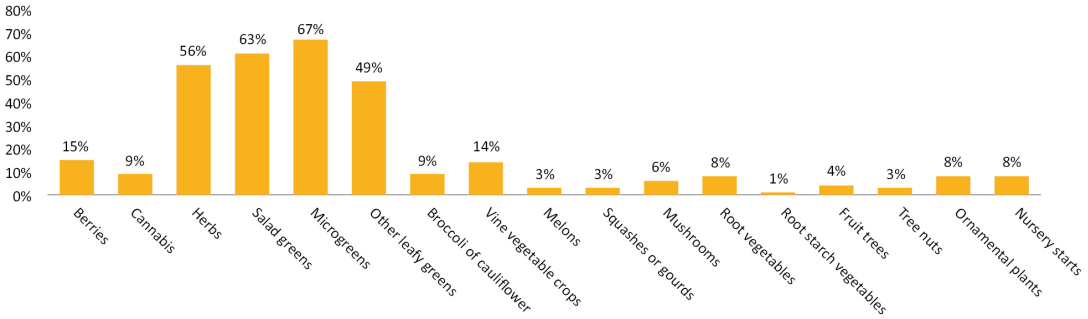
Given that it is expensive to operate an indoor facility, the crops that generally get the most grow space are those that generate high revenues and/or have quick grow cycles. The result, as reported in the State of Indoor Farming 2017 report by Agrilyst (now known as Artemis), is a distribution of output and activity heavily skewed toward leafy greens, tomatoes, herbs, flowers and microgreens, which easily represented the majority of crops grown indoors at that time.

These findings were largely reinforced in the 2019 Global CEA (Controlled Environment Agriculture) Census. As part of this joint project spearheaded by Agritecture LLC and Autogrow, 316 indoor farms in more than 50 countries responded to a wide variety of questions to uncover insights and trends across several key areas of the indoor agriculture industry including what crops are being grown most frequently.

The majority of indoor farms that took part in the 2019 Global CEA Census stated that they are still focusing the bulk of their efforts on leafy greens (herbs, salad greens and microgreens) due to their quick crop cycles and high percentage of harvestable biomass. In looking at the numbers, 65% of all respondents indicated that they grow salad greens and microgreens including 61% in indoor vertical farms.

The bagged salad market is a perfect example of a booming industry and also one that illustrates society's increasing preference for healthy and clean foods. According to Grand View Research, the global packaged salad market is currently a $5.24 billion market. The CAGR is projected to be 10.2% between 2020 and 2027, which would bring the value of this market to $10.23 billion by 2027.

The following chart shows all of the crops grown across the indoor vertical farms that participated in the 2019 Global CEA Census:



Crops Grown By Operation — Indoor Vertical Farming (2019 Global CEA Census)

With many new ventures entering this market and a large portion of the well-established entities in expansion mode, it is clear that indoor farming is here to stay and will be a big part of the future of food production both in the U.S. and throughout the rest of the world. Despite its rise in popularity, the indoor farming industry is not without its challenges, many of which are financial and operational in nature. While indoor farmers are generally progressive and well-intentioned, there is still a lot of work to be done before their facilities morph into truly optimized production and profit centers. This represents a sizeable opportunity for outside vendors to bring fresh perspectives and further innovation into the mix.

We believe that our technology is a key missing ingredient that can help indoor growers of salad greens, microgreens, herbs, other leafy greens, vine vegetables and berries maximize yields, improve crop quality and consistency, and decrease production costs over time.

Cannabis Market Opportunity

While we do not cultivate, come in contact with, distribute or dispense cannabis or any cannabis derivatives that are currently prohibited under U.S. federal law, our cultivation solutions can be used within indoor grow facilities by cannabis cultivators if they choose to do so.

In the U.S., the development and growth of the regulated medical and recreational (adult use) cannabis industry has generally been driven by state law and regulation, and accordingly, the market varies on a state-by-state basis. State laws that legalize and regulate cannabis for medicinal reasons allow patients to consume cannabis with a designated healthcare provider's recommendation, subject to various requirements and limitations. As of the date of this prospectus, 33 states, plus the District of Columbia, have passed laws allowing their citizens to use medical cannabis. On top of this medical condition growth trend, there has been a slower but steady increase in the number of states that have chosen to legalize cannabis for recreational use. As of the date of this prospectus, 11 states, plus the District of Columbia, have passed laws allowing adult recreational use cannabis. Furthermore, every single cannabis initiative on the ballot during the 2020 election passed, which resulted in five more states choosing to legalize cannabis in some capacity. Three of those states decided to begin allowing recreational use, one state voted to legalize medicinal cannabis, and the last state became the first state to legalize both medicinal and recreational cannabis during the same election. Shifting public attitudes and state law and legislative activity are driving this change as indicated by a 2019 poll by Quinnipiac University that found that 93% of Americans support patient access to medical-use cannabis, if recommended by a doctor, which was the same level of support from a similar poll conducted by Quinnipiac University in 2018. Similarly, the trend toward further legalization and regulation of cannabis sales is spreading globally. As of the date of this prospectus, over 20 countries outside the U.S. currently have medicinal cannabis regulation in force, and that number is expected to significantly increase over time.

Given that the market size of legal cannabis in the U.S. in 2020 is expected to be $17 billion according to New Frontier, and 53% of cannabis volume is currently grown indoors according to New Leaf Data Services, we estimate that the indoor segment of the legal U.S. cannabis sector is a $9 billion market with the expectation that there will be even more growth on the horizon. In fact, according to a report from April 2020, BDSA, the leading provider of cannabis industry market research, in conjunction with Arcview Market Research, forecasted that U.S. legal cannabis sales will approach $34 billion by 2025, which represents 72% of their projection for total global sales of $47 billion in 2025.

The different cultivation environments for cannabis each have advantages and disadvantages, and this leads to a variance in price points based on quality, actual and perceived, and process. According to New Leaf Data Services' July 10, 2020 U.S. cannabis spot index, the average wholesale price per pound of outdoor grown flower was $904 per pound ($896 per pound the prior week), greenhouse flower averaged $1,216 per pound ($1,215 per pound the prior week), while indoor grown flower averaged $1,778 per pound ($1,777 per pound the prior week) and the total market on average was $1,441 per pound ($1,435 per pound the prior week). Based on the breakdown of production by cultivation environment, indoor grown flower represents 53% of total volume by type while greenhouse and outdoor represent 23% and 24%, respectively. Additionally, based on the breakdown of percentage of observed transactions, indoor grown flower represents 64% of total volume by type while greenhouse and outdoor represent 18% and 18%, respectively.

Outdoor cannabis has the lowest initial CapEx required to start cultivation. According to Marijuana Business Daily (MBD), the average startup cost per square foot of outdoor cultivation is $10. The expansive size of outdoor grows and their reliance on natural soil, lighting and weather conditions means cultivators have relatively few infrastructure needs. They can get their business off the ground quickly and with minimal upfront expenditures trading quality for lower cost production.

Greenhouse grown cannabis commands a higher price per pound than field grown cannabis as the more protected environment produces higher quality flower. According to MBD, the average startup cost per square foot for greenhouse cultivation is $50, but the true costs tend to be all over the map with an executive from Ohio-based Rough Brothers, an 84-year-old greenhouse company that started taking on cannabis clients in 2013, opining that such costs can vary greatly, going so far as to say "I could build you a cannabis greenhouse for $20 a square foot or $200 a square foot."

Indoor grown cannabis commands the highest price per pound as it produces the highest quality flower due to the fact that growers have the most control over the environment. Indoor cultivation facilities vary significantly in sophistication and technology with the build-out costs reflecting that fact. While MBD states that the average startup cost per square foot for indoor cultivation is $75, anything close to that cost would inevitably yield a primitive and arguably insufficient setup. In contrast, Jennifer Martin, a prominent cannabis cultivation consultant, indicated on MarijuanaPropagation.com that a far more advanced and scalable configuration would likely cost between $400 to $500 per square foot. In general, the more a company invests up front, the higher the upside will be in the future. However, beyond initial build-out costs, it has historically been very expensive to grow cannabis in an indoor facility. The industry norm for direct production-related operating costs ranges from approximately $436 per pound according to a competitive cost analysis conducted by MJardin to $516 per pound, which is based on another examination of cultivation costs by the website CannaBusinessPlans.com.

Our Product: the Agrify "Precision Elevated™" Cultivation Solution

Given the significant shortcomings associated with traditional indoor grow methods across all commercial agriculture segments, it was apparent that a new paradigm in indoor cultivation was desperately needed, which is precisely why we are bringing a more modern, manufacturing style approach that is process driven through technology and measured via data and analytics. Overall, our holistic approach to addressing our customers' cultivation needs treats their production facilities as an end-to-end ecosystem whose success depends on all of its components working together optimally.

In looking at our product mix, our core offering and the focus of our sales efforts involves bundling our AVFUs with our Agrify Insights™ software. Our integrated hardware and software solution was specifically designed to form a unified system. It is through this synergistic framework that we are able to offer customers the benefits of increased automation, control, precision, and transparency, which are all things they value.

Beyond these key attributes, we have several other products such as Agrify Integrated Grow Racks, environmental threat mitigation and horticulture lighting solutions as well as services such as those offered through our joint venture with Valiant-America and our equipment financing vehicle that either serve as complements to our core offering to form a novel, fully integrated approach for indoor cultivation or the individual components can also be utilized on their own, offering valuable touchpoints to potentially seed relationships and convert them into more lucrative land-and-expand engagements in the future.

Our individual offerings, which are described in more detail below, are compelling on their own. However, we believe what really sets us apart is our ability to bring to the market a tech-forward, bundled solution of equipment, software and services that is turnkey, end-to-end, fully integrated and optimized for precision growing.

Core Bundled Solution

Agrify Vertical Farming Unit (AVFU)

We believe our proprietary Agrify Vertical Farming Unit (AVFU) technology is the only product in the market that offers a modular, compartmentalized micro-climate growing system for indoor vertical farming. Our AVFU system is designed for large-state and multi-state operators who are looking to produce higher-quality crops consistently at scale, and the ideal facility size that we target in our sales process ranges from 20,000 square feet to 50,000 square feet.

Our AVFU

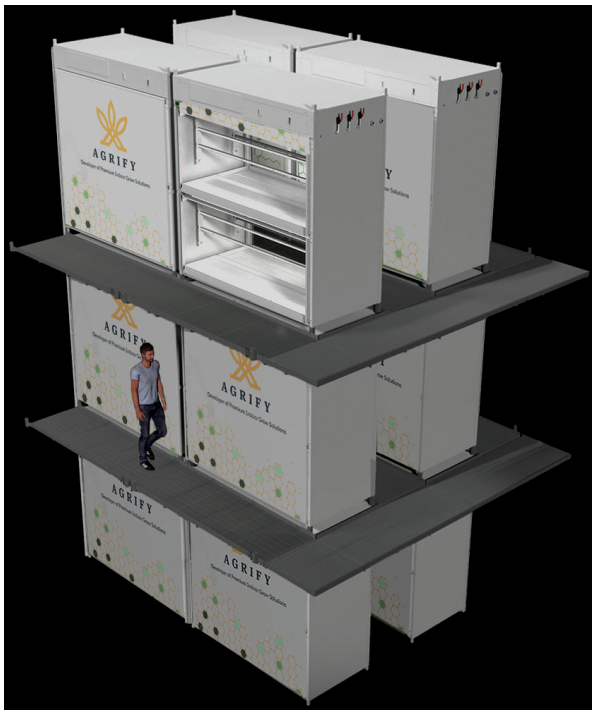
The AVFU is an 8 ft. long x 4 ft. wide x 9.25 ft. tall integrated hardware and software growing system. These units are designed to line up horizontally in rows, and they can be stacked vertically up to 3 units tall, taking advantage of unused indoor vertical space with the below advantages:

- ***Superior Floor Space Utilization.*** Each AVFU provides two grow rows. Our design introduces an open-room facility design approach to maximize available cultivation floor print while offering superior risk mitigation via individual compartmentalized cultivation chambers.
- ***Precise Environmental Controls***. Each AVFU has an environmental control unit (ECU) that is integrated with our proprietary cultivation software, Agrify Insights™. This integration allows for precise control and automation over light photoperiod and intensity, temperature, humidity, vapor pressure deficit (VPD), carbon dioxide, fertigation and irrigation throughout the life cycle of the plants.

- ***Modular Scalability***. The AVFU is designed with proper loading to stack up to 3 units tall, sextupling production volume over the same footprint. Each unit is designed to easily integrate with a mezzanine catwalk system.

- ***Biosecurity and Risk Mitigation***. The AVFU has a motorized curtain on both sides of the unit that enclose the grow area to prevent light-leak and spread of disease that would typically lead to facility-wide crop failure. Contamination can be controlled and limited to the affected units, which are designed with sanitation in mind. From the aluminum frame to the selection of antimicrobial plastics and down to the IP65 electronics and polycarbonate-lensed LED lights, the entire AVFU can be easily sanitized.

- ***Worker Safety***. The AVFU's working area is 8 feet tall, allowing easy access to both rows of plants within the unit. As the motorized curtains can be lifted on either side, this also allows efficient ergonomics at arm's length. Similarly, our Interlight LED technology is dimmed or turned-off when the curtains are raised for a more ambient working environment.

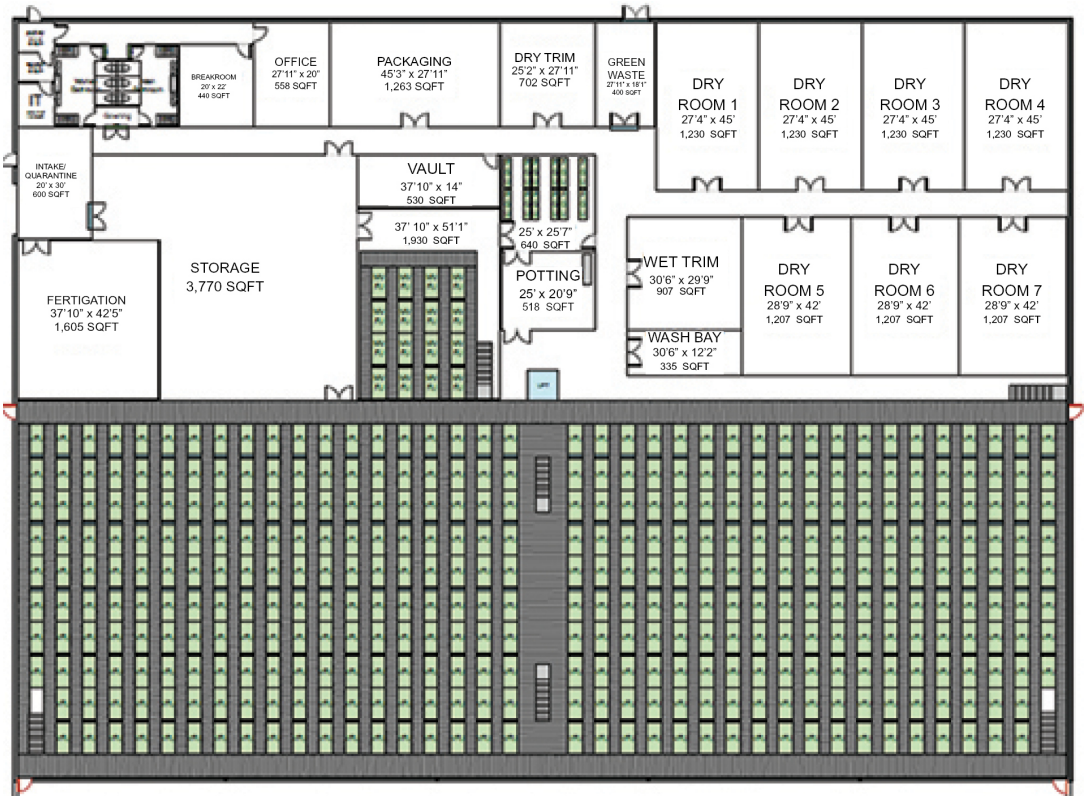


Stacked AVFUs

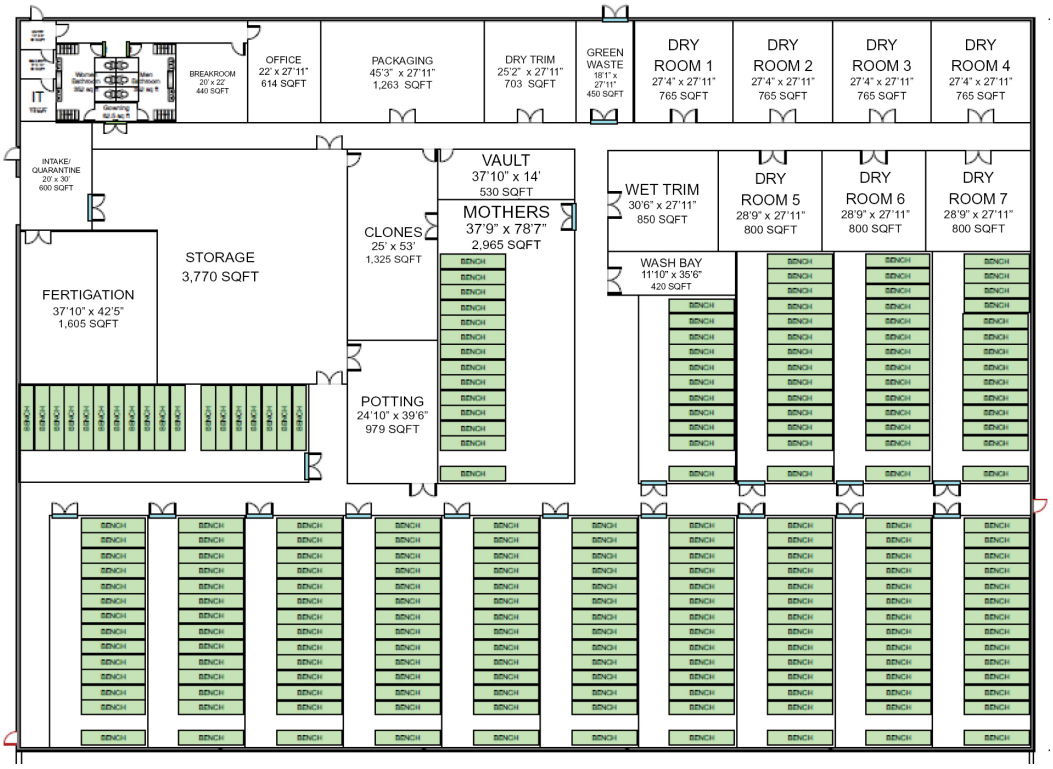
The AVFU is a premium indoor grow solution with an MSRP starting at $20,000, and our most recent AVFU deals have been for between 60 and 535 units as our new customers become satisfied that our grow solutions will be an instrumental part of their operations moving forward. We are targeting large scale projects that range in size from $1 million to over $10 million in AVFU hardware sales before any additional revenue from our Agrify Insights™ software and ancillary products and services are realized.

To further illustrate the benefit of going with the AVFU infrastructure versus a more traditional indoor cultivation setup with conventional LED lights or conventional HPS lights, we have conducted a comparative analysis internally on an actual 45,082 square foot facility.

The first image below is a concept drawing we did showing 752 double stacked AVFUs in this facility. The second image is a concept drawing showing a traditional grow room setup in the exact same facility. The AVFU framework in this particular facility leads to approximately 3x more canopy square footage, which then translates into approximately 4x more estimated annual yield and significantly enhanced revenue opportunities.



Facility with AVFU Setup



Facility with Traditional Grow Room

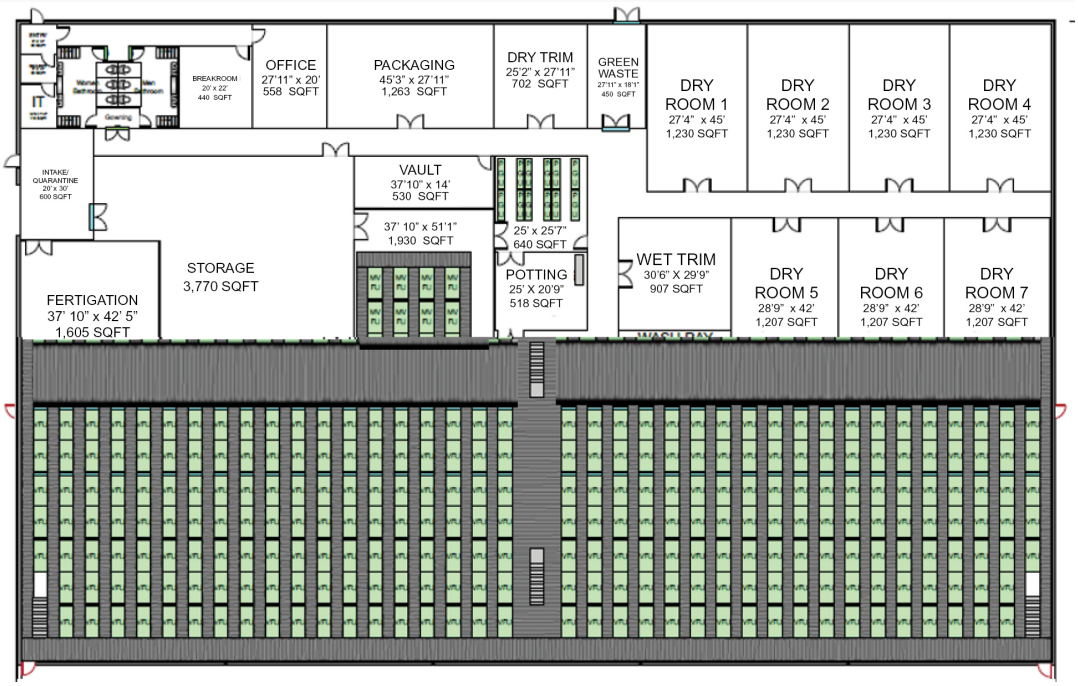
Set forth below are the illustrative costs and revenue potential for cultivators of three different approaches in our conservative and defensible model*:

	AGRIFY	Conventional LED System	Conventional HPS System
Build-Out Cost			
Estimated Facility Infrastructure & Equipment	$12,622,960 *($280 per sq. ft. x 45,082 sq. ft.)*	$12,397,550 *($275 per sq. ft. x 45,082 sq. ft.)*	$6,762,300 *($150 per sq. ft. x 45,082 sq. ft.)*
Cultivation Equipment	$15,040,000	$4,050,000	$2,025,000
Estimated Total Build-Out Cost	$27,662,960	$16,447,550	$8,787,300
Economic Analysis			
Total Canopy Sq. Ft.	48,128 *(752 VFUs)*	16,200 *(242 Benches)*	16,200 *(242 Benches)*
Estimated Annual Yield / Sq. Ft. (lbs.)	0.609	0.463	0.420
Estimated Total Annual Yield	29,324	7,494	6,804
Estimated Price per lb. (avg. assumption)	$3,000	$3,000	$3,000
Estimated Annual Revenue	$87,973,171	$22,482,360	$20,412,000
Estimated Annual OpEx	$9,589,076 *($327/lb.)*	$3,522,236 *($470/lb.)*	$4,422,600 *($650/lb.)*
Annual Estimated EBITDA	$78,384,096	$18,960,124	$15,989,400
NPV (10 years, 15% discount rate)	$365,728,679	$78,708,923	$71,459,799
Payback Period	4 months	10 months	7 months

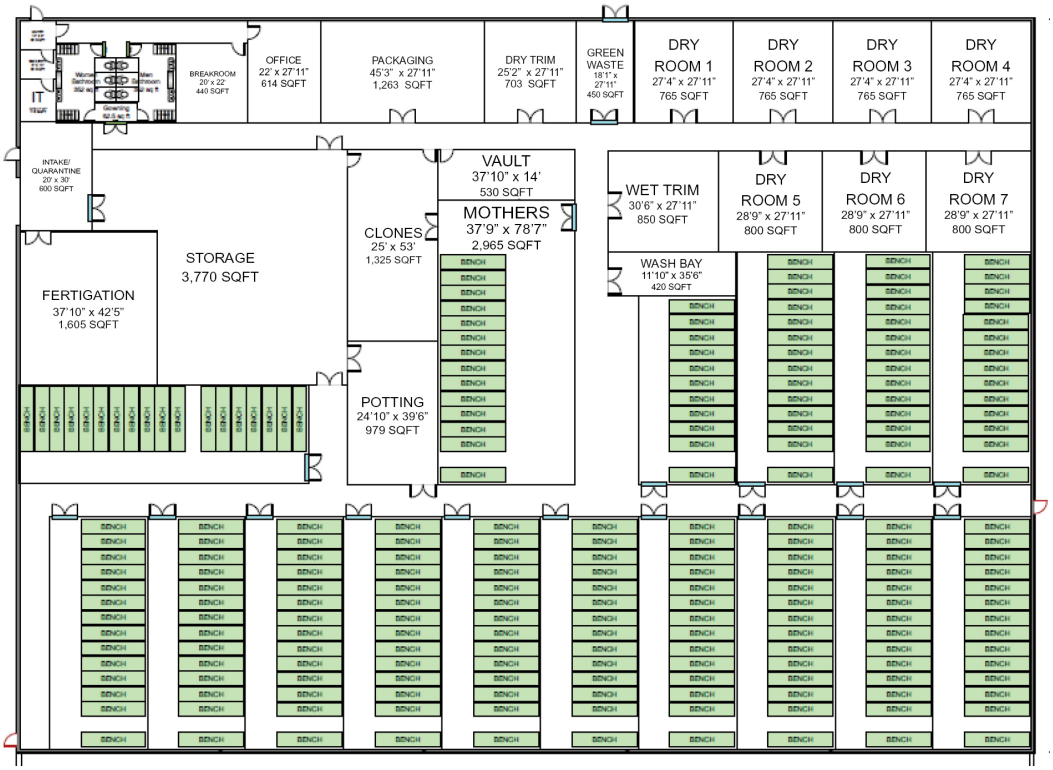
* *See "Certain Non-GAAP Financial Measurements and Reconciliation to GAAP" on page 15.*

While the upfront cost is more for the facility that is outfitted in AVFUs, that is quickly offset by the fact that an AVFU outfitted facility has the capacity to generate about 4x the amount of estimated annual revenue and over 4x the annual estimated EBITDA. In looking at the numerical values in the model, it becomes even more compelling when comparing the AVFU facility to a facility with a traditional grow room. Assuming an initial investment of approximately $27.7 million for the AVFU facility build-out, our model indicates that the facility owner would recoup their initial investment and produce significant free cash flow in the first year of operation assuming the facility should be able to achieve almost $88 million of estimated annual revenue and roughly $78.4 million in annual estimated EBITDA. In contrast, the traditional indoor facilities would cost approximately $8.8 million or a little less than $16.5 million to build out depending on which lights are used and would generate approximately $20.4 million or $22.5 million in estimated annual revenue and right around $16 million or just under $19 million in annual estimated EBITDA. When comparing the different facility types on a side-by-side analysis, we believe the AVFU facility is far more attractive than either type of traditional facility given the financial upside is significantly higher, and also the precision elevated approach is a far more sophisticated way to grow crops.

We have also modeled out another scenario in which a prospective customer has a license that stipulates that they are permitted to operate with at most 16,200 square feet of canopy space in their facility (which is the exact same amount of canopy square footage displayed in the above model for the traditional setup in the 45,082 square foot facility). However, given the modular and stackable nature of the AVFUs, we are able to help the customer achieve the same canopy square footage with 253 AVFUs in a facility that is only 20,000 square feet, which is less than half the size of the traditional facility. We have included concept drawings for both facilities below. While canopy square footage is basically identical for all of the different cultivation approaches we looked at in this particular simulation, the AVFU setup requires a much smaller and theoretically much less expensive facility, and because the AVFUs are more productive, the estimated annual yield is about 31% higher than in the facility with the traditional grow room setup and conventional LED lights and 45% higher than in the facility with the traditional grow room setup and conventional HPS lights.



20,000 Square Foot Facility with AVFUs



45,082 Square Foot Facility with Traditional Grow Room

Set forth below are the illustrative costs and revenue potential for cultivators of three different approaches in our conservative and defensible model*:

	AGRIFY	Conventional LED System	Conventional HPS System
Build-Out Cost			
Estimated Facility Infrastructure & Equipment	$5,600,000 *($280 per sq. ft. x 20,000 sq. ft.)*	$12,397,550 *($275 per sq. ft. x 45,082 sq. ft.)*	$6,762,300 *($150 per sq. ft. x 45,082 sq. ft.)*
Cultivation Equipment	$5,819,000	$4,050,000	$2,025,000
Estimated Total Build-Out Cost	$11,419,000	$16,447,550	$8,787,300
Economic Analysis			
Total Canopy Sq. Ft.	16,192 *(253 VFUs)*	16,200 *(242 Benches)*	16,200 *(242 Benches)*
Estimated Annual Yield / Sq. Ft. (lbs.)	0.610	0.463	0.420
Estimated Total Annual Yield	9,877	7,494	6,804
Estimated Price per lb. (avg. assumption)	$3,000	$3,000	$3,000
Estimated Annual Revenue	$29,631,360	$22,482,360	$20,412,000
Estimated Annual OpEx	$3,229,818 *($327/lb.)*	$3,522,236 *($470/lb.)*	$4,422,600 *($650/lb.)*
Annual Estimated EBITDA	$26,401,542	$18,960,124	$15,989,400
NPV (10 years, 15% discount rate)	$121,084,229	$78,708,923	$71,459,799
Payback Period	5 months	10 months	7 months

* *See "Certain Non-GAAP Financial Measurements and Reconciliation to GAAP" on page 15.*

In this case, the estimated total build-out cost for the AVFU facility is approximately $5 million less than the facility with conventional LED lights, but approximately $2.6 million more than the facility with conventional HPS lights. Compared to the facility with conventional LED lights, the AVFU facility is less expensive to build and expected to drive considerably more yield, revenue and EBITDA. Even considering the roughly $2.6 million initial cost savings to build the facility with the conventional HPS lights compared to the AVFU facility, the overall economics still favor the AVFU facility as it should generate over $9 million more in estimated annual revenue and over $10 million more in annual estimated EBITDA, with a slightly faster payback period.

Facility with AVFUs

Additionally, our LED lights, have shown promising results on their own within a 50,000 square foot facility for one of our leafy green customers. This customer reported that our LED lights allowed them to increase their sellable output for romaine lettuce from approximately 92 pounds per grow board to over 210 pounds per grow board, and the amount of their sellable butter lettuce went from 105 pounds per grow board to over 128 pounds per grow board. We believe this result is typical and can be replicated because the increased crop output was the direct result of increased light output and superior light uniformity. Per watt of electricity in, our LEDs produce more usable photons to drive photosynthesis than incandescent, fluorescent, HID or most LED lights on the market.

Overall, this customer experienced a roughly 28% increase in revenue after only 7 weeks of using our lights. They have also reported a noticeable improvement in the appearance of their end products with their chopped romaine looking fuller and greener when grown under our lights versus the lights of another vendor. Lastly, this customer indicated that they are benefiting from a 1-2 day extension in average shelf life.

Our premium indoor grow solutions, whether it's our AVFUs or our LED lights, are designed, engineered and calibrated to drive significant improvements for our customers, who trust us to deliver the type of productivity and quality that was previously unattainable.

Agrify Integrated Grow Racks (AIGR)

We currently offer 2 ft. x 8 ft. indoor agricultural integrated grow racks to supplement the growing process that is occurring within the AVFUs. These racks are differentiated based on the number of integrated shelving tiers within the grow rack system: 2-tier, 4-tier, and 5-tier grow racks. Each shelving tier consists of: Two Agrify Model

W 2 ft. x 4 ft. LED grow lights, hydroponic plumbing, and a drainable basin. Our grow racks have been designed to optimize working conditions, allowing a farm hand/grower to plant, inspect and harvest crops with increased ease. The manufacturer's suggested retail price on these units ranges from $5,000 to $7,500.

4-Tier Agrify Integrated Grow Rack

The difference between an AIGR and an AVFU is an AIGR is designed as a propagation unit with the intended purpose to support the ongoing need in a facility for new plant stock (i.e. plants to grow). The AIGR will support clones or seedlings for 2-4 weeks while they build a root system and grow into "teenage" (more mature) plants. Once that occurs, the plants will be repotted into a larger container and then transferred to an AVFU where the plants will grow to maturity through their vegetative and flowering phases until the flowers produced are ripe and can be harvested.

Agrify Insights™

A key component of our cultivation solution is our proprietary software, Agrify Insights™, which has been developed in-house. A cloud-based software as a service that interfaces with a microservices middleware and relational database that integrates with our hardware and provides our managers, facility owners, facility managers, and growers real-time control and monitoring of facilities, growing conditions, and insights into both production and profit optimization. The combination of precise environmental control and automation with data collection and actionable insights empowers our customers to be more efficient, more productive, and more intelligent about how they run their businesses. We believe that the robust data analytics capabilities from our Agrify Insights™ platform coupled with our AVFU system is enabling our customers to transform their businesses and quality of the product they are cultivating.

Our business model includes charging customers a monthly recurring SaaS subscription fee per deployed AVFU for access to Agrify Insights™, which ranges from $75 to $200 per AVFU per month depending on the level of functionality and support purchased. This provides us with a predictable recurring revenue stream that has high expected customer retention due to the fact that our Agrify Insights™ software is required to operate our AVFUs, and our customers are deeply committed to using our AVFUs. We believe that most customers will opt for our more robust levels of functionality and support. Consequently, we expect our annual SaaS revenue will be between 8% to 10% of total AVFU order value.

The Agrify Insights™ software is focused around optimizing four key components:

- Optimization at the plant level;
- Optimization at the AVFU unit level;
- Optimization at the facility level; and
- Optimization at the business level.

When these key components are combined, they encompass the cultivation operations of an Agrify customer. By reducing human error, providing insights through data collection and analysis, Agrify Insights™ minimizes risk and increases operational efficiencies. Ultimately, our customers are seeking to produce the same consistent end product no matter where they are located. Through our technology grow platform, we enable our customers to have the ability to create brands that are identifiable by taste, look and smell no different than any other consumer product company that provides a branded food or drink product.

Plant Level Optimization

Central to our solution is granular control of the cultivation environment. The end-product of a crop is determined by both the plant's genetics and the environment in which the plants are grown. Control over the growing environment is accomplished through the Agrify Insights™ software. By recoding over 1.5 million data points per AVFU per year and being able to reproduce specific environments based on the data, cultivators are effectively able to minimize the variation in their crops and dial-in the maximum quality. Further individual plant varietals can be optimized by tailoring the grow plan (recipe for cultivation) to enhance particular genetic traits; increasing the temperature can speed chemical processes and growth rates, adjusting the ratio of blue to red light can enhance the production of certain aromatic chemical compounds, and adjusting the length of different phases of a plant's lifecycle can maximize the crop's yield. Additionally, when new varieties of plants are cultivated, having multiple controlled, compartmentalized, growth chambers allow for iterative experiments which offer real insight into how new varieties are best cultivated. For example, you can grow a new variety in 5 different AVFUs that are set to mimic the climate of different geographies to see where the varieties are suited to grow.

Our "Grow Plans" are the templates or recipes that define the parameters for each lifecycle. Grow Plans define the environmental settings (light - photoperiod and intensity/ temp / humidity / VPD / CO2 / irrigation / fertilization) for each crop variety and cultivator as well as the schedule for completing, as applicable, "plant-touching" tasks such as bottoming, pruning, and harvest. Agrify Insights™ ships to the customer with many pre-developed Grow Plans and customers can create their own particular Grow Plans, electing to share them with other customers or not.

Individual AVFU Level Optimization

Our AVFU hardware provides cultivation environmental control within the growth chamber. This hardware and its component valves, motors and sensors are directed and controlled by Agrify Insights™.

- ***Monitor and Control Agrify Hardware.*** Agrify Insights™ can either automatically or manually control our hardware. For example, the water-chilled fan coil can keep temperature in a range accurate to 1.5 degrees Fahrenheit.

- ***Cultivation Environmental Control***. Using Agrify Insights™, users can view environmental charts that plot temperature, humidity, carbon dioxide and vapor pressure deficit (or VPD) over time. It also shows when the plants were irrigated and whether the unit is in cooling, circulating, or dehumidifying mode. We sample these values every minute and report them back to the cloud every 15 minutes, or more often if there have been significant changes. Each growing chamber reports approximately one million data points annually, enabling our clients to perform in-depth analysis of grow performance. The manual control screen visualizes the current state of the grow chamber and enables our technicians to take direct control for troubleshooting, if necessary. The device log shows us what decisions were made by the onboard Agrify Insights™ and why.

Facility Level Optimization

Our modular AVFUs are deployed in scale at a customer's facility with the smallest deployment to date being 63 AVFUs. Agrify Insights™ is designed to operate these individual AVFUs as a combined facility. Agrify Insights™ features at the facility level include:

- ***Production Planning***. The production planning feature is designed to maximize a facility's utilization by executing a "best-fit" scheduling algorithm to selected Grow Plans across the growing units that have been deployed at a customer facility. Since grow plans typically have a different number of growing days that start on staggered schedules, this module is a critical component for optimizing the planting and moving schedules, significantly increasing plant production and reducing the cost per pound of harvest.

- ***Workforce Management.*** Agrify Insights™ includes a workforce planning feature to assign tasks to staff. These tasks can be automatically assigned based on user role or their knowledge, skills, and abilities. The calendar displays the estimated amount of time required to complete plant-touching tasks on any given day.

- ***Automatic Notification System.*** Users can select to subscribe to anomalous events, and users are notified in the order in which they are listed. If a user does not acknowledge the notification within the specified time frame, the next user in the list is notified, providing the business with 24/7 monitoring and notifications.

- ***Preventative Maintenance***. Our equipment and facility preventative maintenance schedules and related tasks are contained, tracked and monitored within Agrify Insights™.

- ***Facility Infrastructure Controls***. Agrify Insights™ controls the irrigation on a facility level as well as connects with the water chilled HVAC system and ambient lighting system, providing our customers a central piece of software for facility management.

Optimization at the Business Level

Agrify Insights™ analysis features enable customers to understand how cultivation decisions impact their overall business. Understanding the data from the cultivation facility can help our customers better plan and make informed decisions that impact downstream parts of their business.

- ***Consumables Procurement Integration***. Each task can also be assigned a set of consumables whose inventory will be reduced when the task is started. This feature can help customers manage supply levels and can automatically create and submit purchase orders so that they never run out of required supplies.

- ***Online SOPs and Safety Datasheets.*** Agrify Insights™ hosts digital copies of our included Standard Operating Procedures and datasheets, or users can upload their own via our content management system, ensuring that the most recent version of SOPs and forms are available to users.

- ***Roles-Based Dashboards.*** Ability to obtain access to information specifically suited to your workforce's various needs. Facility owners have access to high-level information about crop yields and equipment usage in an easy to understand scorecard. Farm managers receive a worksheet and calendar that lets them manage their workforce and automatically assign plant-touching tasks. This also provides facility managers with an ongoing window into consumables and lets them set inventory levels.

- ***Data Collection.*** Agrify Insights™ is a centralized repository for all data relating to the cultivation aspects of our clients' business, including research and development testing data, and the ability to capture and compare test results. By doing so, Agrify Insights™ becomes a customers' cultivation statement of record.

- ***Regulatory Reporting Integration.*** We have commenced working to integrate Agrify Insights™ with Metrc, a leading seed-to-sale integration, enabling customers to do regulatory reporting through the software. The integration is expected to be completed before the end of 2020.

Additional Product Offerings

Bluezone Model 420 — Air Cleaning System

Destructive impact from pathogens is a major issue for our customers and their industry. The Bluezone Model 420 is a U.S. military tested and fielded air purification system that kills and removes airborne pathogens such as powdery mildew, botrytis, and other highly infectious bacteria from indoor grow rooms and produce storage. Such interferences can drastically interrupt businesses' supply chains, leading to lost time and revenue.

Bluezone Model 420

Each unit covers 15,000 cubic feet or air volume. The unit draws air into a self-contained reaction chamber and kills contaminants with ultraviolet-enhanced oxidation, and chemicals are broken down so that the air circulating through the Bluezone comes out clean and safe. Bluezone is California Air Resources Board (CARB) Certified for ozone emissions, as ozone is kept inside the Bluezone reaction chamber. Bluezone is also ETL Safety Certified and NSF Sanitation Certified. The MSRP for the Bluezone Model 420 is $4,500.

We are the exclusive distributor for the Bluezone Model 420 for the indoor agriculture market worldwide. Under our distribution agreement with Bluezone Products, Inc., we are obligated to order $480,000 of Bluezone products in the first contract year and $600,000 of Bluezone products in the second contract year. The distribution agreement is for an initial term through May 31, 2021 and is automatically renewed for successive one year periods unless earlier terminated. Guichao Hua, a member of our board of directors, has an ownership interest in Bluezone of approximately 3%. Raymond Chang, our Chairman of the Board and Chief Executive Officer, has an ownership interest in Bluezone of approximately 8%. Mr. Chang is also a director of Bluezone. To date, we have generated limited revenue from sales of Bluezone products.

Enozo — Pesticide-Free Surface Protection

The Enozo spray bottle offers a water-based alternative to traditional cleaners, deodorizers, and sanitizers. This surface cleaning solution uses ozonated water to kill 99.9% of bacteria like E. coli and Salmonella in only 30 seconds. Aqueous ozone (AO) is a very powerful sanitizer produced in controlled concentrations (below OSHA PEL and STEL requirements) and contains no harsh chemicals, fragrances or dyes. This technology is designed to help reduce workplace illnesses and hazards like irritated skin and allergic reactions, while protecting indoor air quality and physical surfaces.

Enozo Spray Bottle

Enozo dispenses at least 10 full reservoirs (one gallon) of aqueous ozone sanitizing solution per charge, lasting 5,000 refills over the unit's battery life. This eliminates the need to buy hundreds of plastic, one-time use bottles of cleaners. Enozo is registered by the U.S. Environmental Protection Agency for public health use. The manufactuerer's suggested retail price for the Enozo spray bottle is $499.

We have rights to sell Enozo products pursuant to a distribution agreement between us and Enozo Technologies Inc. The distribution agreement is for an initial term of five years with auto renewal for successive one year periods unless earlier terminated. The agreement requires us to make the following minimum purchases to retain distributor status for one of the products: $375,000 for the period from the contract date until December 31, 2021; $750,000 for the year ended December 31, 2022; $1,125,000 for the year ended December 31, 2023, subject to increases by 3% for subsequent years. Guichao Hua, a member of our board of directors, and Raymond Chang, our Chairman of the Board and Chief Executive Officer, each have ownership interests and are board members of Enozo. To date, we have not generated meaningful revenue from sales of Enozo products.

Horticultural Lights

We believe our LEDs are the most advanced horticulture grow lights on the market offering advanced cultivators maximum spectrum adjustment with dimming of light intensity that are essential to custom craft a harvest. By partnering with us, growers will experience industry-leading LED grow lighting technology, outperforming traditional cultivators using other lighting alternatives. Our LED technology has helped our customers qualify for substantial energy rebates from their utility providers, with one customer receiving nearly a half a million-dollar rebate using our LED solutions.

Our horticulture lighting is a high-performance, adjustable spectrum LED grow lighting solution for commercial horticulture cultivation, with the flexibility and lighting intensity to scale from vegetative growth phase to higher light needs in bloom phase. Full independent spectrum dimming offers growers increased level of control and experimentation to perfect their grow recipes. Our LED grow lights have passed the most stringent third-party accredited testing. These lights retail for between $249 and $999 depending on the model and specs.

Our Services

Agrify-Valiant Joint Venture

We established a joint venture with Valiant-America in December 2019. Valiant-America is experienced in consulting and general contracting of a wide range of industrial facilities, but it has a particular specialization and expertise in the development of indoor farming facilities. Valiant's qualified professionals possess a deep working knowledge of our grow systems and how to integrate our offerings when developing cultivation facilities.

Given that many of our customers are either new entrants to the market or companies in expansion mode, it became obvious to us that the majority of them need many services other than just equipment and software, including architectural, engineering, construction and installation services, which we are able to now offer through our joint venture with Valiant-America. The Agrify-Valiant joint venture complements our offering and provides our clients with an end-to-end turnkey solution. We believe being able to provide a full suite of technology products and services to these customers helps to embed us with these customers and enables us to become mission critical to their operations.

Through this strategic and synergistic partnership, we are able to offer our customers relevant value-added services related to architectural, engineering, construction and installation needs, and we are also able to derive significant revenues from the indoor agriculture deals that close under the auspices of this joint venture. Given that we are a majority 60% owner of, and control, the Agrify-Valiant LLC, we consolidate 100% of the revenues that go through the joint venture, and we recognize 60% of all net profits. Revenue from Agrify-Valiant is recognized after the agreed upon work has been completed. Pursuant to the operating agreement of Agrify-Valiant, at any time between the second and fifth anniversary of this offering, we have the right to "call" Valiant's 40% equity interest from Valiant, and Valiant has the right to "put" its 40% equity interest to us. The consideration for the equity purchased pursuant to this right shall be paid in shares of our common stock based on a formula taking into account at the time of exercise the fair market value of our common stock, as well as our gross sales and net earnings.

Equipment Financing

We recognize that many new cultivators face particular capital and time constraints, and we also recognize that the initial cost of our equipment can be a deterrent for some. We solve this problem by offering equipment financing plans for select good credit customers, which we believe further enables us to become a vendor of choice. While we proactively show our prospects that the strong and immediate return on investment derived from Agrify solutions will more than make up for associated start-up costs, we wanted to do even more to support our prospective

customers, which is why we unveiled an equipment financing program to help remove this final barrier to entry for otherwise excited cultivators. This requires participating credit-worthy customers to pay a substantial down payment, typically between 30% and 50% of the purchase price, with the balance financed over two years, with interest, under commercially reasonable terms.

Competitive Landscape

We believe our full suite of product offerings form an unmatched ecosystem for indoor growing. At this time, our Agrify Vertical Farming Unit, our overall bundled solution and our engineering/installation services are highly differentiated from anything else on the market so in one sense we do not have any direct competitors who offer the same type of comprehensive value proposition and single-source benefit.

At the same time, our customers are actively being approached by a variety of companies who do offer compelling standalone products and services so we recognize that our customers do have choices and alternatives, and they also need to factor in opportunity cost whenever they make purchasing decisions. Consequently, we more broadly define our competition as any other company going after the same finite budget dollars as us in the indoor agriculture space. We have highlighted below the most notable players that operate across some of the same functional highly fragmented areas of agriculture technology that we operate.

- ***Semi-Integrated Vertical Cultivation Systems —*** Sprout AI
- ***Aeroponic Systems*** — AEssenceGrows and Thrive Growing
- ***Horticultural Lighting*** — Gavita, Fluence, VividGro, and Heliospectra
- ***Environmental Threat Mitigation Solutions*** — Element Air and Tersano
- ***Monitoring Software*** — Grownetics and Trym
- ***Cultivation Software*** — Quantum Leaf and Flourish
- ***Vertical Cultivation Racking Systems*** — Pipp Horticulture and Montel

Despite the presence of some well-funded and well-established competitors who offer pieces of what we do, we are able to compete on the basis of several defensible factors including our industry experience, our technical expertise, the differentiated value proposition of our individual offerings, and our positioning as a single-source provider. However, we believe above all else, it's our ability to offer an unrivaled level of precision through a total end-to-end turnkey solution that sets us apart from existing competitors and potential new market entrants.

Our Customers

We primarily market and sell our products to newly licensed, well-funded producers in a single market as well as multi-state operators. Our customers choose us for a number of reasons, including the breadth and availability of the products we offer, our extensive expertise, and the quality of our customer service. For large multi-state operators, our solutions allow operators to produce consistent high-quality products regardless of the geographic locations where they are licensed to operate. Our system removes the variations of local grow environment, and also provides consistent standard operating procedures across different facilities, helping every facility to achieve the highest GMP standards. Our ability to provide a "one-stop shop" experience allows us to be the preferred vendor to many of these customers by streamlining their entry into or expansion of their cultivation capabilities. In addition, we believe our customers find great value in the advice and recommendations provided by our knowledgeable sales and service associates, which further increases demand for our products.

We believe the nature of our solutions and our high-touch customer service model strengthens relationships, builds loyalty and drives repeat business as our customers' businesses expand. In addition, we feel as if our premium product lines and comprehensive product portfolio position us well to meet our customers' needs. Furthermore, we fully anticipate that we will be able to leverage all of the data that we are collecting from our existing customer base to make continuous improvements to our offerings and better serve our current and new customers in the future.

To date, we have customers in the following states: Nevada, Colorado, Washington, Michigan, Minnesota, Rhode Island, Massachusetts and Illinois. We also have a customer in Oman.

As for our enterprise-level business, we currently have 1,909 AVFUs deployed and/or booked, and all of them will be powered by Agrify Insights™. Our existing active deployments cover approximately 75,000 square feet of facility space, and that number is expected to grow significantly once we go live with some of our newer customers and once we are able to close more deals from our $121 million qualified pipeline.

Our Growth Strategy

We have developed a multi-pronged growth strategy as described below to help us capitalize on the sizable opportunity at hand. Through methodical sales and marketing efforts, our joint venture with Valiant-America, scale-up manufacturing, and equipment financing, we believe we have implemented several key initiatives we can use to grow our business more effectively. We also intend to opportunistically pursue the strategies described below to continue our upward trajectory and enhance shareholder value. We believe we have made significant progress in 2020 in the form of $32.9 million in new bookings, and we expect this amount to increase based on the strength of the opportunities in our qualified pipeline. We believe our revenues will be enhanced by the many improvements we have made and the growth strategy we have started to implement since Raymond Chang (our Chairman of the Board and Chief Executive Officer) and Guichao Hua (a member of our board of directors) purchased a controlling interest in our company in 2019 and rebranded us as Agrify. Specifically, we have made it a priority to develop our core bundled hardware and software indoor cultivation solution, and we have augmented that with some strategic acquisitions, partnerships, joint ventures and distribution arrangements that we believe will enable us to scale our business as a highly differentiated leader in the indoor agriculture marketplace.

Sales and Marketing

Rigorous Sales Process and Strong Infrastructure in Place to Enable Revenue Growth

We utilize a rigorous Sandler Training sales process to evaluate potential new opportunities and then advance vetted prospects through the different phases of our qualified pipeline. The Sandler Training sales process is a sales process that was originally developed in 1967 by David Sandler as a conscious departure from more traditional sales methods that often relied on pushy and aggressive tactics. The Sandler Training sales process, which is based on the psychology of human behavior, is consistent with the values and culture we have chosen to implement at Agrify, and consequently our salespeople spend most of their time building relationships and qualifying opportunities in order to make closing new business more streamlined, collaborative and organic in nature. There are specific requirements, milestones, and events that we have identified along the sales process that must be met to move prospects through the different parts of the buyer journey in order to convert them from vetted opportunities into committed sales orders within a 12-month period. At each phase of the pipeline, a prospect opportunity is assigned a probability value for closing, providing management production forecast ability. We are diligent in making sure that we are engaging in conversations with well-funded entities that are in good standing with any licensing requirements that they face (or entities that are at least on the cusp of being viable candidates for our grow solutions). We also take into account infrastructure, facility readiness and the presence of key personnel.

To date, the results of our sales process have been encouraging as there has been a high level of alignment, accountability and achievement amongst our sales team. We started 2020 with a backlog of $4 million and during the first nine months of 2020 we received additional bookings of $32.9 million in the form of purchase orders or purchase commitments. We recognized revenue of $7.7 million during the first nine months of 2020, and expect to recognize revenue of approximately 75% from the remaining backlog of $29.2 million by June 2021 and the rest gradually thereafter. As of September 30, 2020, we have $121 million of carefully vetted potential sales opportunities (which we refer to as our qualified pipeline). Of this, $53 million of qualified pipeline was generated through our company directly and $68 million through our Agrify-Valiant Joint-Venture. We are presently working to convert this pipeline into confirmed bookings over the next 12 months. Additionally, three of our last four purchase orders or purchase commitments (all of which were secured during 2020) have been for between $7.2 million and $11.1 million, and we expect that our average contract size will continue to increase over time. Given our emphasis on large scale high-value enterprise sales versus high-volume sales, we believe that we will be able to significantly scale our business in the coming years without needing to drastically increase our headcount. For us, it is all about having the right well-trained, knowledgeable sales team instead of the largest sales team.

Looking ahead, our sales team is responsible for overseeing nationwide sales and support, and they will drive our expansion into future international markets. Our territory managers work in tandem with our in-house technology solutions and horticultural experts to provide customers a turnkey indoor facility integrated system proposal. Agreements include the equipment being purchased and multi-year SaaS commitments that bring in substantial trailing revenues.

Marketing Team Aligned with Sales Force to Maximize Our Industry Visibility to Drive Revenue

Our marketing department works in tandem with our sales and business development representatives to best represent and sell our Agrify "Precision Elevated™" cultivation solution to the indoor agriculture industry. The sales and business development representatives push prospects through a sales funnel, also known as a "buyer's journey". A strategic sales model has been developed to create a seamless transition from the initial communication with a prospect through targeted messaging and eventually moving all the way through the funnel. The movement through this funnel is referred to as TOFU/MOFU/BOFU (Top of the Funnel/Middle of the Funnel/Bottom of the Funnel), which is focused on attention, consideration and decision-making, keeping the messaging consistent, the potential buyer engaged, and ultimately leads the prospect to close on a deal.

Our sales funnel duties are completed using a customer relationship management (CRM) system, which allows us to track, qualify, and report on the ROI of our marketing initiatives. Leads are added into our pipeline funnel predominantly through our digital marketing efforts, including direct marketing, organic social media growth, thought leadership, and demand generation via paid advertisements and press releases.

Direct Marketing

We capitalize on our direct marketing efforts by utilizing our internal CRM database, as well as the external help of trusted industry databases to target the right audience. Additionally, by taking advantage of our partners' networks, such as those of Valiant-America, Bluezone, and Enozo, we are able to reach an extensive and reliable list of cultivators and industry professionals. Emails go out on a weekly basis and are subdivided by product focus and state, depending on the campaign. We use A/B testing in our email campaign strategy in order to harness meaningful messages that result in 40% engagement and above average open and click through rates. We are turning impressions into contacts at a rapid rate and have managed to grow our contact list by over 100% in one quarter. We are seeing 20% of these leads become sales qualified and 10% result in an opportunity.

Social Media and Thought Leadership

Through the creation and promotion of engaging content that positions us as a thought leader, we continue to organically grow our social media audience. We share original video, photography, industry-related articles, and blog content on a consistent basis. By developing strategic partnerships with well-known and respected brands, we are working to better position ourselves with marketing and branding efforts on social. Furthermore, we promote our social media in our communication via email and on our website. We also keep our finger on the pulse of trends and competitors in the market, remaining in-the-know. We have successfully more than doubled our social media presence across all platforms in the first half of 2020 and continue to show improvement in transitioning our social media audience into prospects.

Trade Shows

While digital marketing has been a consistent driver of leads and visibility for Agrify, trade shows related to various indoor agriculture topics have also proven to be highly effective. When attending trade shows, we typically position ourselves front and center, with high-level sponsorships and outstanding booth placement and presentation. Our product and subject matter experts take advantage of speaking opportunities, positioning Agrify as industry thought leaders. We expect to continue to grow our industry presence by generating leads using conferences as a platform. The trade show plan has been carefully vetted to ensure that these shows are reputable, have a strong business to business focus, high foot-traffic rates, as well as hosted in a desirable market.

In 2019, we were able to capture over 800 leads at our biggest event and over 200 leads per show at smaller regional conferences. More than 75% have become marketing qualified leads, of which 50% later became sales qualified. Many of these leads are now customers or in the process of becoming customers. We are seeing the largest amount of marketing qualified leads come through our trade show attendance. Given the proven success of these

conferences, their reputation, their audiences and their industry magnitude, we expect to continue to seek headline and sponsorship roles. As a result of the COVID-19 pandemic, only three trade shows have been completed so far in 2020, with several others have been postponed. Accordingly, during the pandemic we have reallocated our resources to focus more heavily on our other means of generating leads, particularly through expanding our direct sales force.

Paid Advertising

We utilize paid advertising such as banner ads on high-trafficked media sites that largely focus on agricultural technology and other relevant topics. We provide content offers and other downloadable materials in order to capture these leads. As we gain experience through these different marketing initiatives, we will make appropriate spending adjustments with our most effective outlets. We seek to expand our business both nationally and internationally, and will do so when we have proven, viable marketing options available to us.

Public Relations Campaigns

We have successfully gained the interest of press from networks such as CNN, CFN, industry trade journals, and more. With our industry positioning using thought-leadership and on-going participation in industry conferences, we have been highlighted every month through the Newswire and featured in a variety of media outlets. We will continue to sponsor and keynote in industry-related events including; tech and agriculture conferences, podcasts, radio shows and more to continue to gain press and ultimately more exposure.

Through our digital marketing efforts, we promote our solutions to customers who stand to benefit most from our products and services, which spans a wide range of indoor agriculture verticals. We aim to bring in at least twenty new qualified leads a week by driving traffic to our website, keeping impression numbers high, while also keeping our cost-per-lead low. As we receive more data, we plan on continuing to monitor the digital efforts that garner the most leads and make adjustments accordingly.

Our Joint Venture with Valiant-America

From a growth perspective, we believe our joint venture with Valiant-America gives us a credible and complementary channel partner with extensive industry relationships to help us gain additional market share by making our solution a prominent part of their discussions involving future projects in this space.

We believe this joint venture positions us as the only fully integrated grow solution in the industry as we are now able to provide services around facility design, mechanical and engineering planning, general contracting, hardware and equipment installation, and commissioning for all indoor agriculture customers.

We believe our turnkey offerings are highly differentiated from anything else on the market in that they combine our seamlessly integrated hardware and software offerings with a wide range of associated services such as consulting, engineering, and construction to form what we believe is the most complete solution available from a single provider. The totality of our product mix and service capabilities form an unrivaled ecosystem in what has historically been an extremely fragmented market. As a result, we believe we are well situated to create a dominant market position in the indoor agriculture segment.

Scale-Up Manufacturing Capabilities in Order to Meet the Increasing Demand for Our Grow Solutions

We currently use contract manufacturers (CMs) in the U.S. and in Asia for prototyping and volume manufacturing, and we plan to expand our capabilities in order to meet the increasing demand for our grow solutions. We design the systems internally, and then work with our CMs and suppliers to refine, prototype, and test the designs. The designs are documented at a level that allows us to have our products manufactured at multiple CMs, both in the U.S. and abroad.

Additionally, we work with domestic suppliers on a wide range of metal fabrication to allow for rapid prototyping and product development. One such CM and metal fabrication shop that we have worked with extensively in the past is Harbor Mountain, which is based in the Atlanta, GA area. Harbor Mountain has been producing and assembling many of our products for over three years, and they have served our needs well as a versatile and valued partner. On July 21, 2020, we acquired Harbor Mountain, including the acquisition of Harbor Mountain's research and development, testing, and flexible manufacturing plant located just outside Atlanta, GA, along with key personnel and equipment. We believe this acquisition fits in nicely with our overall scale-up manufacturing strategy. For the remainder of 2020, Harbor Mountain will be asked to support our AVFU sales and production goals as a primary manufacturing location. In 2021 and beyond, we expect Harbor Mountain to evolve into more of a service, engineering development and prototyping, and test facility.

On December 7, 2020, we entered into a five year supply agreement with Mack Molding Co., a Vermont corporation ("Mack"), pursuant to which Mack will become a key supplier of Company's AVFUs. Mack is a leading supplier of molded plastic parts, fabricated metal parts and high-level assemblies to the medical, industrial, transportation, energy/environment, computer and business equipment, defense/aerospace and consumer markets. Founded in 1920, Mack is a wholly-owned subsidiary of the privately-held Mack Group corporation, which also includes Mack Technologies and Mack Prototype. The supply agreement contemplates that, following an introductory period, we will negotiate a minimum percentage of our AVFU requirements that we will purchase from Mack each year based on the agreed upon pricing formula. In the event we are unable to agree with Mack on a minimum percentage, either party may terminate the agreement upon notice without further consequence or obligation.

We believe the supply agreement with Mack provides us with several key benefits, including:

- *Rapid Scaling:* We can scale to customer orders, as Mack has agreed to maintain a minimum safety stock of AVFUs in inventory and allow us to store additional inventory pending customer deliveries; and
- *Long-Term Efficiencies:* Under a strategic partner governance structure, we intend to meet with Mack at least quarterly in efforts to improve components acquisition and logistics, to lower production costs over time, provide additional alternatives for third party component vendors and allow us to provide input as to Mack's overall production process and operational effectiveness.

We anticipate that this key strategic relationship with Mack will grow with our continued and expanding need for additional AVFUs.

Overall, our approach to manufacturing is to use CMs to prototype, iterate, and begin initial production, then transition to volume production including in lower cost geographies, which results in both rapid time-to-market and low production costs. As we grow, we intend to continually analyze and evolve our manufacturing capabilities to best meet our customer needs while always focusing on ways to maximize operating margins.

Equipment Financing Program

Our equipment financing program, which we believe is novel in the indoor agriculture space, is instrumental in removing certain points of friction from the sales cycle and it can be a major factor that tips the scales in our favor with certain prospects. When any of our credit-worthy customers take advantage of this opportunity, they are able expedite their speed to market as a result of not having to finance their purchase with 100% equity. As a result, we are able to collect between 30% and 50% of the purchase order immediately, with the balance typically being repaid over a two-year period, with interest, under commercially reasonable terms. By offering this equipment financing option, we have effectively broadened our prospect pool, and we believe that this will lead to more deals closing over time.

Intellectual Property

We rely on a combination of patent, trademark, copyright, trade secret, including federal, state and common law rights in the United States and other countries, nondisclosure agreements, and other measures to protect our intellectual property. We require our employees, consultants, and advisors to execute confidentiality agreements and to agree to disclose and assign to us all inventions conceived under their respective employment, consultant, or advisor agreement, using our property, or which relate to our business. Despite any measures taken to protect our intellectual property, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. Our business is affected by our ability to protect against misappropriation and infringement of our intellectual property, including our trademarks, service marks, patents, domain names, copyrights and other proprietary rights.

Patents

We filed United States provisional patent application 62/830,770 on April 8, 2019 titled “Device for Light Limiting Current” that serves as the priority document for our April 6, 2020 filing of PCT application PCT/US2020/026878. This application is directed to, among other things, a current limiting device coupled with a light emitting diode driver.

Trademarks and Copyrights

We, or our subsidiaries, have a pending United States trademark applications for AGRIFY and TRIGROW. In addition, we recognize common-law trademark rights TECHOPS, AGRIFY INSIGHTS and AGRINAMICS for different software as a service products.

Our subsidiary, Agrify Brands LLC is the owner of certain common-law trademarks that it licenses to third parties. Marks covered by the license include, DAWG STAR (including multiple logo designs), WESTERN CULTURED (including multiple logo designs), TWISTED LEGION (logo), WAXTRONAUT (including multiple logo designs) and WAXTRONAUT COSMICALLY CURATED EXTRACTS.

Although we have not sought copyright registration for our technology or works to date, we rely on common law copyright and trade secret protections in relation to our TechOps/Agrify Insights™ computer program for indoor agriculture management. We have registered our Internet domain names related to our business. We license software from third parties and utilize open source software for integration into our applications.

In addition, while we know that our current product and service capabilities are highly novel and compelling, we do not intend to be complacent. We will continue to learn from our customers and from the market, and if there is an opportunity to deploy a new and improved version of one of our offerings or if we decide there is room in the market for a new type of solution, we fully intend to diligently explore those possibilities to augment our existing business and grow our reach.

Property, Employees and Human Capital Resources

As of the date of this prospectus, we have over 40 employees located in or around Burlington, Massachusetts. Since our prior office lease in Burlington expired in July 2020, we currently have no physical office and our employees are working remotely. However, we may consider entering into a new office lease in the future although we have no current plans to do so. We may also pursue additional warehousing capabilities. None of our employees are subject to collective bargaining agreements. We consider our relationship with our employees to be good.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity incentive plan is to attract, retain and reward personnel through the granting of stock-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Corporate History

Agrify Corporation was incorporated in the state of Nevada on June 6, 2016, originally incorporated as Agrinamics, Inc. (or Agrinamics). On September 16, 2019, Agrinamics amended its articles of incorporation to reflect a name change to Agrify Corporation.

On January 22, 2020, we and Agrify Merger Sub, Inc., our newly formed wholly-owned subsidiary (or Merger Sub), entered into an Agreement of Merger with TriGrow Systems, Inc., a Nevada corporation (or TriGrow), pursuant to which TriGrow was merged with and into Merger Sub, with Merger Sub as the surviving corporation, resulting in our indirect acquisition of TriGrow.

On December 8, 2019, we formed a 60/40 joint-venture limited liability company in which we are the 60% majority owner with Valiant-America, LLC, one of the largest premium integrated consulting and general contracting firms in North America with more than 10 years of facility general contracting experience across many states.

On July 21, 2020, we acquired Harbor Mountain Holdings, LLC, who we have had a close working relationship with for over three years, including the acquisition of Harbor Mountain’s research and development, testing, and flexible manufacturing plant located just outside Atlanta, GA, along with key personnel and equipment. This acquisition will give us increased, and in some respects, new in-house resources and capabilities around engineering, prototyping, manufacturing, testing, warehousing and installation services.

MANAGEMENT

The following table sets forth certain information about our executive officers, key employees and directors as of the date of this prospectus.

Name	Age	Position
Raymond Chang	50	Chief Executive Officer; Chairman of the Board of Directors
Niv Krikov	50	Chief Financial Officer
Robert Harrison	49	Chief Operating Officer
Richard A. Stamm	53	Vice President, General Counsel and Secretary
Guichao Hua	55	Director
Thomas Massie	56	Independent Director
Krishnan Varier	40	Independent Director
Timothy Mahoney	64	Independent Director
Timothy Oakes	52	Independent Director

Raymond Chang. Mr. Chang has served as our president, chief executive officer and chairman of our board of directors since June 15, 2019. From September 2015 through May 2019, Mr. Chang was a lecturer in the Practice of Management at the Yale School of Management and an Adjunct Professor at Babson College as well as a managing director at NXT Ventures. In 1997, Mr. Chang founded GigaMedia, the first broadband company in Asia. In 2000, this company went public on NASDAQ (NASDAQ: GIGM) and raised $280 million, one of the largest IPOs for an internet company prior to 2000. In 2007, Mr. Chang founded Luckypai, a leading TV shopping company in China and raised venture financing from Lightspeed Venture Partners, DT Capital, Intel, Lehman Brothers, and Goldman Sachs. Luckypai was sold to Lotte Group, which is one of the largest Asian conglomerates based in Korea, for $160 million in 2010. From 2012 to 2013, Mr. Chang served as the chief executive officer of New Focus Auto, the largest automobile aftersales service company listed on the Hong Kong Stock Exchange (HKSE: 0360.HK). In 2014, Mr. Chang completed the sale of New Focus Auto to CDH Investments, which is one of the largest private equity firms based in Asia, and raised over $150 million for the company. In 2000, Mr. Chang was selected by Fortune as one of the twenty-five "Next Generation Global Leaders Under 40" and by Business Week Asia as one of Asia's 20 most influential new economy leaders in the 21st century. He was also featured in 2005 as a panel speaker at the World Economic Forum in Zurich, Switzerland. Mr. Chang was the former treasurer/elected board member of Shanghai American School and a member of the Young Presidents Organization — Shanghai Chapter. Mr. Chang received his BA from New York University, MBA from Yale School of Management, and MPA from Harvard JFK School of Government. We believe that Mr. Chang's successful serial entrepreneurial and management track records make him a qualified member of our board.

Niv Krikov. Mr. Krikov has served as our chief financial officer since January 20, 2020. From March 2018 to January 2020, Mr. Krikov served as the chief financial officer of Desalitech, Inc., a water purification company based in Newton, MA. From January 2016 to November 2017, Mr. Krikov served as the chief financial officer of PeerApp, a technology company for development and license of high-performance cache solutions for telecommunication networks based in Austin, TX. From November 2014 to December 2015, Mr. Krikov served as the chief financial officer of Proftect, Inc., a technology company for development and license of high-performance cache solutions for telecommunication networks based in the Boston area. From March 2007 to November 2014, Mr. Krikov served as the chief financial officer of NTS, Inc., a publicly traded international telecommunication company listed on the NYSE (NYSE: NTS) and TASE Prior to that, Mr. Krikov served as corporate controller with Nur Macroprinters Ltd. (NASDAQ: NURM) prior to it being acquired in 2007 by Hewlett Packard Company and as controller and credit and revenue manager with Alvarion Ltd. Mr. Krikov received his BA from Tel Aviv University and his LLM from Bar-Ilan University.

Robert Harrison. Mr. Harrison has served as our chief operating officer since July 21, 2020. Mr. Harrison joined us on April 15, 2020 as our director, project management. From January 2014 to October 2019, Mr. Harrison served as the region head LED lamps of LEDVANCE / Osram Sylvania, a worldwide leader in innovative lighting products as well as intelligent and connected lighting solutions under the Sylvania and Osram brands. At LEDVANCE / Osram Sylvania, Mr. Harrison ran the business unit for LED lighting in North America and South America. From November 2009 to January 2014, Mr. Harrison served as the director of engineering responsible for Osram Sylvania's solid-state lighting and power electronics activities as well as the head of the

project management office. Prior to LEDVANCE / Osram Sylvania, Mr. Harrison held roles in the automotive metrology, industrial automation and biomedical areas. Mr. Harrison is PMP certified with the Project Management Institute and holds 16 patents. Mr. Harrison received his BS and MS degrees in Mechanical Engineering from Worcester Polytechnic Institute and his MBA from Babson College.

Richard A. Stamm. Mr. Stamm has served as our vice president, general counsel and secretary since September 16, 2020. Prior to joining our company, Mr. Stamm was the Vice President, General Counsel and Secretary of Ocean Spray Cranberries, Inc., where he spent the previous 23 years. Mr. Stamm also served as Vice President of Cooperative Development at Ocean Spray (which operates as a cooperative), and was responsible for managing the intricate contractual and ownership relationships between Ocean Spray and its grower-owners. Over the past 15 years, Mr. Stamm also served as Board Secretary at Ocean Spray, playing an integral role with the Ocean Spray board's Governance Committee and with Cooperative Membership with respect to board structure, composition and representation by independent directors and outside advisors. Prior to his service with Ocean Spray, Mr Stamm spent four years in corporate practice with Dechert, LLP, a large international law firm. Mr. Stamm was an active member and former Chairman of the Legal, Tax and Accounting Committee of the National Council of Farmer Cooperatives (NCFC) along with numerous other industry associations. He has spoken at numerous industry Board of Director Education and Cooperative Governance seminars and also serves as a guest lecturer on Board Governance for Cornell University Dyson School's Cooperative Business Management Class. Following an undergraduate degree in Business Economics from Brown University in 1989, Mr. Stamm graduated first in his class from the University of Connecticut School of Law in 1992.

Guichao Hua. Mr. Hua has served as a member of our board of directors since June 15, 2019. Mr. Hua is a renowned expert in the global power electronics arena. He brings over 25 years of experience in the lighting industry and has extensive knowledge in running successful businesses. In 2007, Mr. Hua founded Inventronics Inc., which is currently one of the largest companies in the world engaged in the design and manufacture of high efficiency, high reliability and long-life LED drivers, and served as the founder and chief executive officer from 2007 to 2019, and has served as the executive chairman since 2019. In 2016, Inventronics became a public company in China (300582.SZ). In December 2017, Mr. Hua founded 4D Bios Inc., which is focused on the design, manufacture, and marketing and sales of LED vertical farm systems. 4D Bios aims to become a global leader in this high-tech new agriculture industry. Mr. Hua is a co-founder and former vice president of engineering of VPT Inc., which is now one of the largest military/aerospace power companies in the world. Mr. Hua received his Ph.D. from the Center for Power Electronic System (CPES) at Virginia Tech in 1994, and served as research associate and scientist in CPES for 5 years. Mr. Hua has obtained more than 20 U.S. patents and published more than 70 theses, enjoying a strong reputation in the switch power industry. We believe that Mr. Hua's exemplary career building thriving global hardware companies along with his design, engineering and manufacturing expertise makes him a qualified member of our board.

Thomas Massie. Mr. Massie has served as a member of our board of directors since June 24, 2020. Since 2016, Mr. Massie has been a partner with WAVE Equity Partners, a Boston based private equity firm that accelerates market validated companies solving some of the world's greatest challenges in essential markets for energy, food, water, and waste. In addition, since 2016, Mr. Massie has served as the chief executive officer of Topline Performance Solutions, Inc., a management consulting firm based in Woburn, MA. From 1987 to 2016, Mr. Massie was the founder and chief executive officer of three technology related companies, Mass Micro Systems, Focus Enhancements and Bridgeline Digital, each of which subsequently went public on NASDAQ. From 2002 to 2007, Mr. Massie was a board member and chairman of the corporate governance committee for MapInfo Corp., which was acquired by Pitney Bowes in 2007. Mr. Massie is a guest lecturer at the University of Massachusetts, Robert J. Manning School of Business and attended Wayne State University. Mr. Massie was a non-commissioned officer in the United States Army and is currently the chairman of the board for Warriors A Team, a nonprofit dedicated to assisting struggling veterans to successfully re-acclimate in civilian life. We believe that Mr. Massie's demonstrated sales leadership, private equity experience and track record of taking companies public makes him a qualified member of our board.

Krishnan Varier. Mr. Varier has served as a member of our board of directors since June 24, 2020. Mr. Varier joined Arcadian Capital Management in 2018 to help lead its principal investing activities, including deal sourcing, due diligence and negotiations, bringing more than 15 years of financial services and Wall Street deal-making experience and knowledge. For much of his career, Mr. Varier served as a healthcare investment banker in relationship coverage roles with Cowen (2014-2016), BofA-Merrill Lynch (2011-2013) and Morgan Keegan and has completed more than $6 billion in closed capital raising and merger and acquisition transactions. Mr. Varier began independently working with companies in the cannabis industry in 2016 in varying capacities as

a private investor, mentor, advisor and consultant as part of Varier Venture Consulting LLC. Mr. Varier completed his undergraduate studies in 2001 at the University of Texas at Austin, where he earned a B.A. in Economics with a focus in Business Administration. He initially gained experience as a wealth manager for AXA Advisors, and later with the Austin-based brokerage firm Eltekon Financial. He then joined Bank of America's Global Corporate Bank in Charlotte, NC, as part of its Treasury Solutions Group inside sales team covering large-cap industrial corporate clients. Mr. Varier also holds an MBA from the University of North Carolina at Chapel Hill, Kenan-Flagler Business School, with a double-focus in Finance and Investment Management. We believe that Mr. Varier's role as an investor with a deep focus on our industry combined with his lengthy history in investment banking makes him a qualified member of our board.

Timothy Mahoney. Mr. Mahoney has served as a member of our board of directors since December 17, 2020. Mr. Mahoney served as a U.S. Representative for Florida's 16th congressional district from January 2007 to January 2009. Mr. Mahoney is the owner of Caribou LLC, a strategic advisory firm he found in 2009 that consults with CEOs and their boards on managing systemic risk and maximizing shareholder value through the identification and capture of strategic opportunities. In March 2013, Mr. Mahoney also founded Cannae Policy Group, a Washington D.C. based public policy company, where he serves as a chief political strategist advising companies, associations, and governments on complex public policy issues. Before becoming a Congressman, from 1998 to 2007, Mr. Mahoney was a co-founder of vFinance, Inc., which subsequently acquired National Holdings Corporation. National has grown to become one of America's leading middle-market brokerage firms, managing more than $5 billion of client assets with over 50 offices worldwide. Mr. Mahoney has also been involved with companies in the cannabis industry in varying capacities as a private investor, advisor and consultant, including Atlas Biotechnologies, Inc., a licensed medical cannabis grower operating in Canada and the EU, and Volcanic Green Holdings, Inc., a holding company for a Colombian based outdoor cultivation cannabis grower and CBD extracts producer. Mr. Mahoney holds a BA degree in Computer Science and Business from West Virginia University and an MBA from George Washington University. We believe Mr. Mahoney's knowledge and experience with the legislative process of Congress and his diverse experience and knowledge in corporate governance make him qualified to be a member of our board.

Timothy Oakes. Mr. Oakes has served as a member of our board of directors since December 17, 2020. Since September 2019, Mr. Oakes has served as the chief accounting officer of Endurance International Group Holdings, Inc., a publicly listed company (NASDAQ: EIGI) which is a global provider of cloud-based platform solutions designed to help small and medium-sized businesses succeed online. From April 2018 to September 2019, Mr. Oakes worked as an independent business consultant, providing financial and operational advice. From August 2004 to April 2018, Mr. Oakes served in various finance and accounting roles at Edgewater Technology, Inc., a then publicly traded information technology consulting services company. Mr. Oakes joined Edgewater in 2004 as a Director of Finance and was subsequently promoted to Vice President of Finance in 2007, Chief Accounting Officer in 2008 and Chief Financial Officer in 2009. Mr. Oakes holds a Bachelor of Science degree in Business Administration from Stonehill College. He began his career in accountancy at the Boston office of KPMG LLP. We believe Mr. Oakes' executive positions at various publicly traded companies and extensive background in business, public accounting, mergers and acquisitions and corporate governance matters make him qualified to be a member of our board.

CORPORATE GOVERNANCE

Director Independence

The board of directors has reviewed the independence of our directors based on the listing standards of the NASDAQ. Based on this review, the board of directors has determined that each of Thomas Massie, Krishnan Varier, Timothy Mahoney and Timothy Oakes are independent within the meaning of the NASDAQ rules. In making this determination, our board of directors considered the relationships that each of these non-employee directors has with us and all other facts and circumstances our board of directors deemed relevant in determining their independence. As required under applicable NASDAQ rules, we anticipate that our independent directors will meet in regularly scheduled executive sessions at which only independent directors are present.

Board Committees

Our Board has established the following three standing committees: audit committee; compensation committee; and nominating and governance committee, or nominating committee. Our board of directors has adopted written charters for each of these committees. Copies of the charters will be available on our website. Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Audit Committee

The audit committee is responsible for, among other matters:

- appointing, compensating, retaining, evaluating, terminating, and overseeing our independent registered public accounting firm;
- discussing with our independent registered public accounting firm the independence of its members from its management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls, and compliance with legal and regulatory requirements;
- coordinating the oversight by our board of directors of our code of business conduct and our disclosure controls and procedures
- establishing procedures for the confidential and/or anonymous submission of concerns regarding accounting, internal controls or auditing matters; and
- reviewing and approving related-person transactions.

Our audit committee consists of Krishnan Varier, Timothy Mahoney and Timothy Oakes, with Mr. Oakes serving as the chairman. The NASDAQ rules require us to have one independent audit committee member upon the listing of our common stock, a majority of independent directors within 90 days of the date of this prospectus and all independent audit committee members within one year of the date of this prospectus. Our board of directors has affirmatively determined that Krishnan Varier, Timothy Mahoney and Timothy Oakes meet the definition of "independent director" for purposes of serving on an audit committee under Rule 10A-3 and NASDAQ rules. Our board of directors has determined that Mr. Oakes qualifies as an "audit committee financial expert," as such term is defined in Item 407(d)(5) of Regulation S-K.

Compensation Committee

The compensation committee is responsible for, among other matters:

- reviewing key employee compensation goals, policies, plans and programs;
- reviewing and approving the compensation of our directors and executive officers;
- reviewing and approving employment agreements and other similar arrangements between us and our executive officers; and
- appointing and overseeing any compensation consultants or advisors.

Our compensation committee consists of Thomas Massie, Timothy Mahoney and Timothy Oakes, with Mr. Mahoney serving as the chairman.

Nominating Committee

The purpose of the nominating committee is to assist the board in identifying qualified individuals to become board members, in determining the composition of the board and in monitoring the process to assess board effectiveness. Our nominating committee consists of Thomas Massie, Krishnan Varier and Timothy Mahoney, with Mr. Massie serving as the chairman.

Board Leadership Structure

Currently, Raymond Chang is our principal executive officer and our chairman of the board.

Risk Oversight

Our board of directors will oversee a company-wide approach to risk management. Our board of directors will determine the appropriate risk level for us generally, assess the specific risks faced by us and review the steps taken by management to manage those risks. While our board of directors will have ultimate oversight responsibility for the risk management process, its committees will oversee risk in certain specified areas.

Specifically, our compensation committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements, and the incentives created by the compensation awards it administers. Our audit committee oversees management of enterprise risks and financial risks, as well as potential conflicts of interests. Our board of directors is responsible for overseeing the management of risks associated with the independence of our board of directors.

Code of Business Conduct and Ethics

Our board of directors adopted a Code of Business Conduct and Ethics that applies to our directors, officers and employees. A copy of this code will be available on our website. We intend to disclose on our website any amendments to the Code of Business Conduct and Ethics and any waivers of the Code of Business Conduct and Ethics that apply to our principal executive officer, principal financial officer, principal accounting officer, controller, or persons performing similar functions.

EXECUTIVE COMPENSATION

Summary Compensation Table

The following table provides information regarding the compensation paid during the years ended December 31, 2019 and 2018 to each of the executive officers named below, who are collectively referred to as "named executive officers" elsewhere in this prospectus.

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards ($)[1]	Non-Equity Incentive Plan Compensation ($)	Non-qualified Deferred Compensation Earnings ($)	All Other Compensation ($)	Total ($)
Raymond Chang,	**2019**	86,345	—	—	40,043	—	—	13,848[2]	140,236
Chief Executive Officer and Chairman of the Board	**2018**	—	—	—	—	—	—	—	—
Matthew Liotta,	**2019**	87,019[3]	—	—	16,534	—	—	140,514[4]	244,067
Former Chief Technology Officer[3]	**2018**	—	—	—	—	—	—	39,333[5]	39,333
Niv Krikov,	**2019**	—	—	—	—	—	—	—	—
Chief Financial Officer[6]	**2018**	—	—	—	—	—	—	—	—

(1) Reflects the aggregate grant date fair value of stock options granted during the relevant fiscal year calculated in accordance with FASB ASC Topic 718. For a discussion of valuation assumptions, see Note 9 to our audited consolidated financial statements included in this proxy statement/prospectus.

(2) Includes payment of health plan premiums as per our policy.

(3) On August 5, 2020, Mr. Liotta resigned from his position as chief technology officer and is no longer an employee of our company. On December 17, 2020, Mr. Liotta resigned from our board of directors and in consideration of such resignation, we agreed on the acceleration of vesting of all unvested options to purchase shares of our common stock held by Mr. Liotta and his spouse, Jennifer Liotta.

(4) Includes our payment of health plan premiums as per our policy in the total amount of $13,848 and consulting fees of $126,666 as per consulting agreement between TriGrow and Argand Group, LLC, a company controlled by Matthew Liotta.

(5) Includes consulting fees of $13,333 per month between TriGrow and Argand Group, LLC a company controlled by Matthew Liotta. The agreement covered the fees payment through March 2018.

(6) On January 20, 2020, we and Mr. Krikov entered into an agreement pursuant to which Mr. Krikov agreed to be employed by us as our chief financial officer, effective as of February 1, 2020.

Employment Agreements

Raymond Chang

We will enter into an employment agreement with Raymond Chang to serve as our Chief Executive Officer effective as of the closing of this offering. We agreed to pay Mr. Chang an annual base salary of $300,000. Mr. Chang will be eligible to receive a discretionary performance-based bonus of up to $300,000 that will be determined and paid at the sole discretion of the Company and may be based on a variety of factors, including his individual performance and the overall performance of the Company. The agreement is for an initial term of three years, to be automatically extended for successive three-year periods, subject to earlier termination as provided in the agreement.

In the event that Mr. Chang's employment is terminated by us without cause or in connection with a change of control or by Mr. Chang for good reason, he will be entitled to receive certain severance benefits, including severance pay equal to the greater of (a) 300% of his annual base salary and (b) $1,000,000. We can terminate Mr. Chang's employment for cause only if we receive the unanimous agreement of our board of directors. In addition, if we terminate his employment without cause, or if Mr. Chang resigns for good reason, or upon the occurrence of a change of control, all of his issued but unvested options will immediately vest. In addition to the terms of our standard invention assignment, restrictive covenants, and confidentiality agreement, Mr. Chang's employment agreement contains confidentiality, non-solicitation and non-competition provisions, whereby Mr. Chang is subject to non-solicitation restrictions for a period of at least one year and to non-competition restrictions for a period of at least six months following his employment period.

Niv Krikov

We will enter into an employment agreement with Niv Krikov to serve as our Chief Financial Officer effective as of the closing of this offering. We agreed to pay Mr. Krikov an annual base salary of $265,000. Mr. Krikov will be eligible to receive a discretionary performance-based bonus of up to $180,000 that will be determined and at the sole discretion of the Company and may be based on a variety of factors, including his individual performance and the overall performance of the Company. The agreement is for an initial term of two years, to be automatically extended for successive two-year periods, subject to earlier termination as provided in the agreement.

In the event that Mr. Krikov's employment is terminated by us without cause or in connection with a change of control or by Mr. Krikov for good reason, he will be entitled to receive certain severance benefits, including severance pay equal to his base salary for a period equal to the greater of (a) one year and (b) from the termination date through the end of the term of the agreement. In addition, if we terminate his employment without cause, or if Mr. Krikov resigns for good reason, or upon the occurrence of a change of control, all of his issued but unvested options will immediately vest. In addition to the terms of our standard invention assignment, restrictive covenants, and confidentiality agreement, Mr. Krikov's employment agreement contains confidentiality, non-solicitation and non-competition provisions, whereby Mr. Krikov is subject to non-solicitation restrictions for a period of at least one year and to non-competition restrictions for a period of at least six months following his employment period.

On May 6, 2020, Mr. Krikov was granted stock options to purchase 233,173 shares of common stock under our 2019 Stock Option Plan (the "2019 Plan") at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On July 20, 2020, Mr. Krikov was granted stock options to purchase 36,827 shares of common stock under our 2019 Plan at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On October 19, 2020, Mr. Krikov was granted stock options to purchase 217,832 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. Each of these stock option grants provide for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

Robert Harrison

We will enter into an employment agreement with Robert Harrison to serve as our Chief Operating Officer effective as of the closing of this offering. We agreed to pay Mr. Harrison an annual base salary of $250,000. Mr. Harrison will be eligible to receive a discretionary performance-based bonus of up to $120,000 that will be determined and at the sole discretion of the Company and may be based on a variety of factors, including his individual performance and the overall performance of the Company. The agreement is for an initial term of two years, to be automatically extended for successive two-year periods, subject to earlier termination as provided in the agreement.

In the event that Mr. Harrison's employment is terminated by us without cause or in connection with a change of control or by Mr. Harrison for good reason, he will be entitled to receive certain severance benefits, including severance pay equal to his base salary for a period equal to the greater of (a) one year and (b) from the termination date through the end of the term of the agreement. In addition, if we terminate his employment without cause, or if Mr. Harrison resigns for good reason, or upon the occurrence of a change of control, all of his issued but unvested options will immediately vest. In addition to the terms of our standard invention assignment, restrictive covenants, and confidentiality agreement, Mr. Harrison's employment agreement contains confidentiality, non-solicitation and non-competition provisions, whereby Mr. Harrison is subject to non-solicitation restrictions for a period of at least one year and to non-competition restrictions for a period of at least six months following his employment period.

On May 6, 2020, Mr. Harrison was granted stock options to purchase 21,198 shares of common stock under our 2019 Plan at an exercise price per share of $1.44. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On July 20, 2020, Mr. Harrison was granted stock options to purchase 113,802 shares of common stock under our 2019 Plan at an exercise price per share of $1.44. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On October 19, 2020, Mr. Harrison was granted stock options to purchase 108,916 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest

12 months following issuance and the balance vests in 36 equal monthly installments thereafter. Each of these stock option grants provide for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

Richard A. Stamm

We will enter into an employment agreement with Richard Stamm to serve as our Vice President, General Counsel and Secretary effective as of the closing of this offering. We agreed to pay Mr. Stamm an annual base salary of $250,000. Mr. Stamm will be eligible to receive a discretionary performance-based bonus of up to $100,000 that will be determined and at the sole discretion of the Company and may be based on a variety of factors, including his individual performance and the overall performance of the Company. The agreement is for an initial term of two years, to be automatically extended for successive two-year periods, subject to earlier termination as provided in the agreement.

In the event that Mr. Stamm's employment is terminated by us without cause or in connection with a change of control or by Mr. Stamm for good reason, he will be entitled to receive certain severance benefits, including severance pay equal to his base salary for a period equal to the greater of (a) one year and (b) from the termination date through the end of the term of the agreement. In addition, if we terminate his employment without cause, or if Mr. Stamm resigns for good reason, or upon the occurrence of a change of control, all of his issued but unvested options will immediately vest. In addition to the terms of our standard invention assignment, restrictive covenants, and confidentiality agreement, Mr. Stamm's employment agreement contains confidentiality, non-solicitation and non-competition provisions, whereby Mr. Stamm is subject to non-solicitation restrictions for a period of at least one year and to non-competition restrictions for a period of at least six months following his employment period.

On October 19, 2020, Mr. Stamm was granted stock options to purchase 162,611 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provide for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

Former Chief Technology Officer

On June 4, 2019, we and Matthew Liotta entered into an employment agreement pursuant to which Mr. Liotta agreed to be our chief technology officer, effective as of June 4, 2019. Pursuant to this agreement, Mr. Liotta was paid an annual gross salary of $170,000 and agreed to a one year non-competition restriction as well as a one year non-solicitation restriction. Mr. Liotta accepted a temporary salary reduction of 35% as of April 1, 2020. On August 5, 2020, Mr. Liotta resigned as chief technology officer to pursue other opportunities. In consideration for his service to our company, Mr. Liotta entered into a separation agreement pursuant to which he will receive severance in an amount equal to six months of his base salary payable over such period. On December 17, 2020, Mr. Liotta resigned from our board of directors and in consideration of such resignation, we agreed on the acceleration of vesting of all unvested options to purchase shares of our common stock held by Mr. Liotta and his spouse, Jennifer Liotta.

Potential Payments Upon Termination or Change in Control

Pursuant to their respective employment agreements as more fully described above, each of our executive officers are entitled to receive potential payments upon a termination of employment without cause or resignation for good reason or termination of employment without cause or resignation for good reason following a change in control.

Outstanding Equity Incentive Awards At Fiscal Year-End

The following table sets forth certain information concerning option awards and stock awards held by our named executive officers as of December 31, 2019. These grants were subsequently revoked and in May 2020, we issued replacement options for the same number of shares but with a lower exercise price. Our named executive officers did not hold any stock awards as of December 31, 2018.

	Option Awards					Stock Awards			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock that Have Not Vested (#)	Market Value of Shares or Units of Stock that Have Not Vested ($)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights that Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights that Have Not Vested ($)
Raymond Chang	29,679[1]	207,754	—	1.96	December 27, 2029	—	—	—	—
Matthew Liotta	14,840[2]	103,881	—	2.16	December 27, 2024	—	—	—	—

(1) On December 9, 2019, Mr. Chang was granted options to purchase 237,433 shares of our common stock under our 2019 Plan, which options vest in equal monthly installments over a period of 48 months, exercisable at $1.96 per share and expiring 10 years from the date of grant. These options were subsequently cancelled in May 2020. On May 6, 2020 Mr. Chang was granted options to purchase 534,199 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 143,499 of the stock options were fully vested on the grant date and the remaining stock options vest monthly over 24 to 48 months, and 242,368 shares are subject to accelerated vesting in the event of a change of control transaction or initial public offering. On July 20, 2020, Mr. Chang was granted options to purchase 22,567 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On October 19, 2020, Mr. Chang was granted stock options to purchase 418,898 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. Each of the July 20, 2020 and October 19, 2020 stock option grants provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

(2) On December 26, 2019, Mr. Liotta was granted options to purchase 118,721 shares of our common stock under our 2019 Plan, which options vested in equal monthly installments over a period of 48 months, exercisable at $2.16 per share and expiring 5 years from the date of grant. These options were subsequently cancelled in May 2020. On May 6, 2020, Mr. Liotta was granted stock options to purchase 309,499 shares of common stock under our 2019 Plan at an exercise price per share of $1.58 and expiring 5 years from the date of grant. 71,727 of the stock options were fully vested on the grant date and the remaining stock options vest monthly over 24 to 48 months. On August 5, 2020, Mr. Liotta resigned from his position as chief technology officer and is no longer an employee of our company. On December 17, 2020, Mr. Liotta resigned from our board of directors and in consideration of such resignation, we agreed on the acceleration of vesting of all unvested options to purchase shares of our common stock held by Mr. Liotta and his spouse, Jennifer Liotta.

Non-Executive Director Compensation

Except as set forth below, the non-executive members of our board of directors have not received any compensation prior to this offering and no arrangements have been entered into in relating to compensation after this offering. Following this offering, the board of directors will establish a compensation package for the non-executive members of the board of directors.

On May 6, 2020, Mr. Massie was granted options to purchase 29,039 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 14,098 of the stock options were fully vested on grant date and the remaining stock options are vested monthly over 24 to 48 months. This stock option grant provides that 2,647 shares are subject to accelerated for vesting in the event of a change of control transaction or an initial public offering. On August 10, 2020, Mr. Massie was granted options to purchase 21,000 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On October 19, 2020, Mr. Massie was granted stock options to purchase 58,368 shares of common stock under our 2019 Plan at an

exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

On July 20, 2020, Mr. Varier was granted options to purchase 5,000 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides that 50% of shares are subject to accelerated for vesting in the event of a change of control transaction or an initial public offering. On August 10, 2020, Mr. Varier was granted options to purchase 3,300 shares of common stock at an exercise price per share of $1.44 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. On October 19, 2020, Mr. Varier was granted stock options to purchase 56,744 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

On October 19, 2020, Mr. Hua was granted stock options to purchase 65,044 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

On October 19, 2020, Mr. Mahoney was granted stock options to purchase 65,044 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

On October 19, 2020, Mr. Oakes was granted stock options to purchase 65,044 shares of common stock under our 2019 Plan at an exercise price per share of $3.07 and expiring 10 years from the date of grant. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. This stock option grant provides for accelerated vesting in the event of a change of control transaction or an initial public offering under which 50% of such options (assuming none have previously vested) will vest immediately prior to such event.

Compensation Committee Interlocks and Insider Participation

None of our officers currently serves, or has served during the last completed fiscal year, on the compensation committee or board of directors of any other entity that has one or more officers serving as a member of our board of directors.

2019 Stock Option Plan

On June 4, 2019, we adopted and approved the 2019 Stock Option Plan which provides for the issuance of 2,758,260 shares of our common stock. On August 10, 2020 and October 8, 2020, our Board of Directors and stockholders, respectively, approved an increase to the maximum number of shares of common stock authorized for issuance over the term of the 2019 Plan from 2,758,260 shares to 5,307,083 shares. As of the date of this prospectus, we have granted an aggregate of 4,951,085 options to various officers, directors, employees and consultants under the 2019 Plan. As of the date of this prospectus, there are 355,998 shares available to be granted under the 2019 Plan. On or prior to the consummation of this offering, we intend to cancel the 2019 Plan and convert these stock options to the 2020 Plan, as more fully described below. Under the 2019 Stock Option Plan, the standard vesting schedule provides that 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter. However, our board of directors is permitted to provide for alternative or accelerated

vesting schedules in approving each stock option grant. In many cases, our board of directors has included an accelerated vesting schedule under which 50% of the stock options granted vest immediately prior to a change of control transaction or the our first underwritten public offering.

2020 Omnibus Equity Incentive Plan

Our board of directors and stockholders have adopted and approved the 2020 Omnibus Equity Incentive Plan (the "2020 Plan"), which has replaced the 2019 Plan. The 2020 Plan is a comprehensive incentive compensation plan under which we can grant equity-based and other incentive awards to our officers, employees, directors, consultants and advisers. The purpose of the 2020 Plan is to help us attract, motivate and retain such persons with awards under the 2020 Plan and thereby enhance shareholder value.

Administration. The 2020 Plan is administered by the board, and upon consummation of this offering will be administered by the compensation committee of the board, which shall consist of three members of the board, each of whom is a "non-employee director" within the meaning of Rule 16b-3 promulgated under the Exchange Act and "independent" for purposes of any applicable listing requirements. If a member of the compensation committee is eligible to receive an award under the 2020 Plan, such compensation committee member shall have no authority under the plan with respect to his or her own award. Among other things, the compensation committee has complete discretion, subject to the express limits of the 2020 Plan, to determine the directors, employees and nonemployee consultants to be granted an award, the type of award to be granted the terms and conditions of the award, the form of payment to be made and/or the number of shares of common stock subject to each award, the exercise price of each option and base price of each stock appreciation right ("SAR"), the term of each award, the vesting schedule for an award, whether to accelerate vesting, the value of the common stock underlying the award, and the required withholding, if any. The compensation committee may amend, modify or terminate any outstanding award, provided that the participant's consent to such action is required if the action would impair the participant's rights or entitlements with respect to that award. The compensation committee is also authorized to construe the award agreements, and may prescribe rules relating to the 2020 Plan. Notwithstanding the foregoing, the compensation committee does not have any authority to grant or modify an award under the 2020 Plan with terms or conditions that would cause the grant, vesting or exercise thereof to be considered nonqualified "deferred compensation" subject to Code Section 409A, unless such award is structured to be exempt from or comply with all requirements of Code Section 409A.

Grant of Awards; Shares Available for Awards. The 2020 Plan provides for the grant of stock options, SARs, performance share awards, performance unit awards, distribution equivalent right awards, restricted stock awards, restricted stock unit awards and unrestricted stock awards to non-employee directors, officers, employees and nonemployee consultants of Agrify or its affiliates. The aggregate number of shares of common stock that may be reserved and available for grant and issuance under the 2020 Plan is 2,500,000 shares, plus any reserved shares of common stock not issued or subject to outstanding awards granted under our 2019 Stock Plan (the "Prior Plan"). No more than [____] shares of common stock in the aggregate may be issued under the 2020 Plan in connection with incentive stock options. Shares shall be deemed to have been issued under the 2020 Plan solely to the extent actually issued and delivered pursuant to an award. If any award granted under the Prior Plan or the 2020 Plan expires, is cancelled, or terminates unexercised or is forfeited, the number of shares subject thereto is again available for grant under the 2020 Plan. The 2020 Plan shall continue in effect, unless sooner terminated, until the tenth (10^{th}) anniversary of the date on which it is adopted by the board of directors. The board of directors in its discretion may terminate the 2020 Plan at any time with respect to any shares for which awards have not theretofore been granted; provided, however, that the 2020 Plan's termination shall not materially and adversely impair the rights of a holder, without the consent of the holder, with respect to any award previously granted.

Future new hires and additional non-employee directors and/or consultants would be eligible to participate in the 2020 Plan as well. The number of stock options and/or shares of restricted stock to be granted to executives and directors cannot be determined at this time as the grant of stock options and/or shares of restricted stock is dependent upon various factors such as hiring requirements and job performance.

Stock Options. The 2020 Plan provides for either "incentive stock options" ("ISOs"), which are intended to meet the requirements for special federal income tax treatment under Section 422 of the Code, or "nonqualified stock options" ("NQSOs"). Stock options may be granted on such terms and conditions as the compensation

committee may determine, which shall be specified in the option agreement; provided, however, that the per share exercise price under a stock option may not be less than the fair market value of a share of common stock on the date of grant and the term of the stock option may not exceed 10 years (110% of such value and five years in the case of an ISO granted to an employee who owns (or is deemed to own) more than 10% of the total combined voting power of all classes of capital stock of our Company or a parent or subsidiary of our Company). ISOs may only be granted to employees. In addition, the aggregate fair market value of common stock covered by one or more ISOs (determined at the time of grant), which are exercisable for the first time by an employee during any calendar year may not exceed $100,000. Any excess is treated as a NQSO.

Stock Appreciation Rights. A SAR entitles the participant, upon exercise, to receive an amount, in cash or stock or a combination thereof, equal to the increase in the fair market value of the underlying common stock between the date of grant and the date of exercise. The compensation committee shall set forth in the applicable SAR award agreement the terms and conditions of the SAR, including the base value for the SAR (which shall not be less than the fair market value of a share on the date of grant), the number of shares subject to the SAR and the period during which the SAR may be exercised and any other special rules and/or requirements which the compensation committee imposes on the SAR. No SAR shall be exercisable after the expiration of ten (10) years from the date of grant. SARs may be granted in tandem with, or independently of, stock options granted under the 2020 Plan. A SAR granted in tandem with a stock option (i) is exercisable only at such times, and to the extent, that the related stock option is exercisable in accordance with the procedure for exercise of the related stock option; (ii) terminates upon termination or exercise of the related stock option (likewise, the common stock option granted in tandem with a SAR terminates upon exercise of the SAR); (iii) is transferable only with the related stock option; and (iv) if the related stock option is an ISO, may be exercised only when the value of the stock subject to the stock option exceeds the exercise price of the stock option. A SAR that is not granted in tandem with a stock option is exercisable at such times as the compensation committee may specify.

Performance Shares and Performance Unit Awards. Performance share and performance unit awards entitle the participant to receive cash or shares of common stock upon the attainment of specified performance goals. In the case of performance units, the right to acquire the units is denominated in cash values. The compensation committee shall set forth in the applicable award agreement the performance goals and objectives and the period of time to which such goals and objectives shall apply. If such goals and objectives are achieved, such distribution of shares, or payment in cash, as the case may be, shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year to which such performance goals and objectives relate, unless otherwise structured to comply with Code Section 409A.

Distribution Equivalent Right Awards. A distribution equivalent right award entitles the participant to receive bookkeeping credits, cash payments and/or common stock distributions equal in amount to the distributions that would have been made to the participant had the participant held a specified number of shares of common stock during the period the participant held the distribution equivalent right. A distribution equivalent right may be awarded as a component of another award (but not an option or SAR award) under the 2020 Plan, where, if so awarded, such distribution equivalent right will expire or be forfeited by the participant under the same conditions as under such other award. The compensation committee shall set forth in the applicable distribution equivalent rights award agreement the terms and conditions, if any, including whether the holder is to receive credits currently in cash, is to have such credits reinvested (at fair market value determined as of the date of reinvestment) in additional ordinary shares, or is to be entitled to choose among such alternatives.

Restricted Stock Awards. A restricted stock award is a grant or sale of common stock to the holder, subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the compensation committee or the board of directors may impose, which restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise, as the compensation committee or the board of directors may determine at the date of grant or purchase or thereafter. If provided for under the restricted stock award agreement, a participant who is granted or has purchased restricted stock shall have all of the rights of a shareholder, including the right to vote the restricted stock and the right to receive dividends thereon (subject to any mandatory reinvestment or other requirement imposed by the compensation committee or the board of directors or in the award agreement). During the restricted period applicable to the restricted stock, subject to certain exceptions, the restricted stock may not be sold, transferred, pledged, exchanged, hypothecated, or otherwise disposed of by the participant..

Restricted Stock Unit Awards. A restricted stock unit award provides for a grant of shares or a cash payment to be made to the holder upon the satisfaction of predetermined individual service-related vesting requirements, based on the number of units awarded to the holder. The compensation committee shall set forth in the applicable restricted stock unit award agreement the individual service-based vesting requirements which the holder would be required to satisfy before the holder would become entitled to payment and the number of units awarded to the holder. The holder of a restricted stock unit shall be entitled to receive a cash payment equal to the fair market value of an ordinary share, or one ordinary share, as determined in the sole discretion of the compensation committee and as set forth in the restricted stock unit award agreement, for each restricted stock unit subject to such restricted stock unit award, if and to the extent the holder satisfies the applicable vesting requirements. Such payment or distribution shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the calendar year in which the restricted stock unit first becomes vested, unless otherwise structured to comply with Code Section 409A. A restricted stock unit shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares prior to the time the Holder shall receive a distribution of Shares

Unrestricted Stock Awards. An unrestricted stock award is a grant or sale of shares of our common stock to the employees, non-employee directors or non-employee consultants that are not subject to transfer, forfeiture or other restrictions, in consideration for past services rendered to the Company or an affiliate or for other valid consideration.

Change-in-Control Provisions. The compensation committee may, in its sole discretion, at the time an award is granted or at any time prior to, coincident with or after the time of a change in control, cause any award either (i) to be cancelled in consideration of a payment in cash or other consideration in amount per share equal to the excess, if any, of the price or implied price per share of common stock in the change in control over the per share exercise, base or purchase price of such award, which may be paid immediately or over the vesting schedule of the award; (ii) to be assumed, or new rights substituted therefore, by the surviving corporation or a parent or subsidiary of such surviving corporation following such change in control; (iii) accelerate any time periods, or waive any other conditions, relating to the vesting, exercise, payment or distribution of an award so that any award to a holder whose employment has been terminated as a result of a change in control may be vested, exercised, paid or distributed in full on or before a date fixed by the compensation committee; (iv) to be purchased from a holder whose employment has been terminated as a result of a change of control, upon the holder's request, for an amount of cash equal to the amount that could have been obtained upon the exercise, payment or distribution of such rights had such award been currently exercisable or payable; or (v) terminate any then outstanding award or make any other adjustment to the awards then outstanding as the compensation committee deems necessary or appropriate to reflect such transaction or change. The number of shares subject to any award shall be rounded to the nearest whole number.

Amendment and Termination. The compensation committee may adopt, amend and rescind rules relating to the administration of the 2020 Plan, and amend, suspend or terminate the 2020 Plan, but no such amendment or termination will be made that materially and adversely impairs the rights of any participant with respect to any award received thereby under the 2020 Plan without the participant's consent, other than amendments that are necessary to permit the granting of awards in compliance with applicable laws.

CERTAIN RELATIONSHIPS AND RELATED-PARTY TRANSACTIONS

In addition to the compensation arrangements, including employment, termination of employment, and change in control arrangements, and indemnification arrangements, discussed, when required, in the sections titled "Management" and "Executive Compensation" and the registration rights described in the section titled "Description of Capital Stock — Registration Rights," the following is a description of each transaction for the prior two year period and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeded or exceeds $120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, had or will have a direct or indirect material interest.

Transactions with 4D Bios Inc.

We purchased various equipment from 4D Bios Inc. ("4D"), which totalled $923,000 and $0 in 2019 and 2018, respectively. Guichao Hua, a member of our board of directors, and Raymond Chang, our Chairman of the Board and Chief Executive Officer, each had ownership interests and were board members of 4D as of December 31, 2019. On June 30, 2020, Mr. Chang sold his interest in 4D and resigned as a member of 4D's board. On July 28, 2020, we entered into a purchase agreement with 4D to secure purchases of horticultural equipment. The agreement requires minimum purchases of between $570,000 and $607,000 of 4D products until December 31, 2020. We committed purchases amounting to $577,000 from 4D for the nine months ended September 30, 2020.

Distribution Agreement with Bluezone Products, Inc.

On June 7, 2019, we entered into a Distribution Agreement with Bluezone Products, Inc. ("Bluezone") relating to our distribution rights for the Bluezone products, such rights exclusive as to certain customers. We are obligated to order $480,000 of Bluezone products in the first contract year and $600,000 of Bluezone products in the second contract year. The distribution agreement is for an initial term through May 31, 2021 and is automatically renewed for successive one year periods unless earlier terminated. We purchased approximately $318,000 of Bluezone products for the year ended December 31, 2019. Guichao Hua, a member of our board of directors, and Raymond Chang, our Chairman of the Board and Chief Executive Officer, each had ownership interests and were board members of Bluezone as of December 31, 2019. On July 10, 2020, Guichao Hua sold his interest in Bluezone and resigned as a member of Bluezone's board. We purchased $668,000 and $132,000 of Bluezone products during the first and second contract years, respectively.

Distribution Agreement with Enozo

On March 9, 2020, we entered into a distribution agreement with Enozo Technologies Inc. ("Enozo"), for an initial term of five years with auto renewal for successive one year periods unless earlier terminated. The agreement requires us to make the following minimum purchases to retain exclusive distributor status for one of the products: $375,000 for the period from the contract date until December 31, 2021; $750,000 for the year ended December 31, 2022; $1,125,000 for the year ended December 31, 2023, subject to increases by 3% for subsequent years. Guichao Hua, a member of our board of directors, and Raymond Chang, our Chairman of the Board and Chief Executive Officer, each have ownership interests and are board members of Enozo. We purchased $38,000 of one specific Enozo product and $85,000 of other Enozo products and services during the nine months ended September 30, 2020.

Consulting Agreement between TriGrow and Argand Group, LLC

On November 25, 2018, TriGrow entered into a consulting agreement with Argand Group, LLC ("Argand") under which Argand provided services to TriGrow in connection with managing its business operations. Argand is an entity controlled by Matthew Liotta, a former employee and director of our company. Under this consulting agreement, Argand was paid a fixed fee of $13,333 per month. This consulting agreement was terminated in March 2019 and no fees remain outstanding to Argand.

Share Purchase Agreement with 4D NXT Capital, LLC

On June 4, 2019, we entered into an agreement with 4D NXT Capital, LLC ("NXT") pursuant to which NXT purchased 2,040,000 shares of our common stock in exchange for $4,000,000. Guichao Hua, a member of our board of directors, and Raymond Chang, our Chairman of the Board and Chief Executive Officer, each have ownership interests and are managers of NXT. The shares purchased by NXT pursuant to this agreement have since been distributed from NXT to its members or related parties of its members and the shares owned by Messrs. Chang and Hua as set forth under "Security Ownership of Certain Beneficial Owners and Management" reflect the effect of such distribution.

Share Purchase Agreement with Argand Group, LLC, Dennis Liotta, and 4D NXT Capital, LLC

On May 15, 2020, we entered into a share purchase agreement pursuant to which NXT purchased 1,275,000 outstanding shares of our common stock from each of Argand Group, LLC and Dennis Liotta in exchange for $2,500,000. Matthew Liotta, a former employee and director of our company, is the manager of Argand Group, LLC. The shares purchased by NXT pursuant to this agreement have since been distributed from NXT to its members or related parties of its members and the shares owned by Messrs. Chang and Hua as set forth under "Security Ownership of Certain Beneficial Owners and Management" reflect the effect of such distribution.

Note and Warrant Purchase Agreement with NXT3J Capital, LLC

On August 19, 2020, as part of our 2020 convertible promissory note financing, we entered into a note and warrant purchase agreement with NXT3J Capital, LLC pursuant which we issued and sold a convertible promissory note in the principal amount of $1,000,000 and a five year warrant to purchase 100,000 shares of our common stock at an exercise price of $0.01 per share. The convertible promissory note matures one year from the date of issuance and the warrant has a term of five years. Raymond Chang, our Chairman of the Board and Chief Executive Officer, is the managing director of NXT3J Capital, LLC, although Mr. Chang does not have a pecuniary interest in our securities held by NXT3J Capital, LLC.

Policies and Procedures for Transactions With Related Persons

Prior to this offering, we have not had a formal policy regarding approval of transactions with related parties. In connection with this offering, we have adopted a written policy that our executive officers, directors, beneficial owners of more than 5% of any class of our capital stock, and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related party transaction with us without the prior consent of our audit committee. Any request for us to enter into a transaction with an executive officer, director, beneficial owner of more than 5% of any class of our capital stock, or any member of the immediate family of any of the foregoing persons, in which such person would have a direct or indirect interest, must first be presented to our audit committee for review, consideration, and approval or ratification. In approving or rejecting any such proposal, our audit committee is to consider the relevant facts and circumstances of the transaction available to it, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unrelated third party or to employees under the same or similar circumstances, and the extent of the related person's interest in the transaction. The written policy will require that, in determining whether to approve or reject a related person transaction, our audit committee must consider, in light of known circumstances, whether the transaction is in, or is not inconsistent with, our best interests and those of our stockholders, as our audit committee determines in good faith.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information regarding the beneficial ownership of our common stock as of the date of this prospectus, and as adjusted to reflect the sale of common stock being offered in this offering by:

- each person, or group of affiliated persons, known to us to own beneficially more than 5% of our common stock;
- each of our current directors;
- each of our named executive officers; and
- all of our current directors and executive officers as a group.

The information in the following table has been presented in accordance with the rules of the SEC. Under such rules, beneficial ownership of a class of capital stock includes any shares of such class as to which a person, directly or indirectly, has or shares voting power or investment power and also any shares as to which a person has the right to acquire such voting or investment power within 60 days through the exercise of any stock option, warrant or other right. If two or more persons share voting power or investment power with respect to specific securities, each such person is deemed to be the beneficial owner of such securities. Except as we otherwise indicate below and under applicable community property laws, we believe that the beneficial owners of the common stock listed below, based on information they have furnished to us, have sole voting and investment power with respect to the shares shown. Except as otherwise indicated, each stockholder named in the table is assumed to have sole voting and investment power with respect to the number of shares listed opposite the stockholder's name.

The calculations of beneficial ownership in this table are based on 6,662,028 shares of common stock outstanding as of the date of this prospectus.

Name and Address of Beneficial Owner[1]	Shares Beneficially Owned	Percentage Total Voting Power Prior to Offering	Percentage Total Voting Power After This Offering
Officers and Directors:			
Raymond Chang	2,066,516[2]	25.1%	[__]%
Guichao Hua	883,273[5]	12.0%	[__]%
Thomas Massie	108,407[3]	1.6%	*
Krishnan Varier	65,044[3]	1.0%	*
Niv Krikov	487,832[3]	6.8%	[__]%
Robert Harrison	243,916[3]	3.5%	*
Richard A. Stamm	162,611[3]	2.4%	*
Timothy Oakes	65,044[3]	1.0%	*
Timothy Mahoney	65,044[3]	1.0%	*
All directors and executive officers as a group (9 persons)	4,147,687	41.0%	[__]%
5% shareholders:			
Li Chen	1,664,384[6]	25.0%	[__]%
Argand Group, LLC	1,541,522[6]	21.8%	[__]%
Dennis Liotta	1,345,412	20.0%	[__]%
Win-Light Global Co., Ltd.	833,296[7]	11.1%	[__]%
Jesan Capital Company Limited	723,308[8]	9.8%	[__]%
Qing Chen	471,184	7.1%	[__]%
Hoop Ventures LLC	449,349[9]	6.7%	[__]%
Advanced Glory Holding Limited (BVI)	385,824[10]	5.6%	[__]%
Golden Success HK Limited	387,486[11]	5.5%	[__]%

* Less than 1%.

(1) Unless otherwise indicated, the address of such individual is c/o Agrify Corporation, 101 Middlesex Turnpike, Suite 6, PMB 326, Burlington, MA 01803.

(2) Includes (i) options to purchase 975,664 shares of common stock, (ii) 510,000 shares of common stock held by RTC3 2020 Irrevocable Family Trust, of which Raymond Chang retains the authority to remove the independent trustee, (iii) 158,324 shares of common stock issuable upon conversion of a $1,000,000 2020 convertible promissory note (at an assumed conversion price of $6.32) issued to RTC3 2020 Irrevocable Family Trust, (iv) 158,324 shares of common stock issuable upon conversion of a $1,000,000 2020 convertible promissory note (at an assumed conversion price of $6.32) issued to NXT3J Capital, LLC, an entity controlled by Mr. Chang, (v) warrants to purchase 200,000 shares of common stock associated with our 2020 convertible promissory notes held by RTC3 2020 Irrevocable Family Trust (of which 100,000 was transferred from NXT3J Capital, LLC to RTC3 2020 Irrevocable Family Trust), and (vi) options to purchase 64,204 shares of common stock held by Mr. Chang's son, Raymond Chang Jr.

(3) Represents shares of common stock underlying options.

(4) Includes (i) 1,138,750 shares of common stock held by Argand Group, LLC, which is jointly owned by Matthew Liotta, a former employee and member of our board of directors, and his spouse, Jennifer Liotta, (ii) 309,499 shares of common stock underlying options granted to Matthew Liotta and (iii) 93,273 shares of common stock underlying options granted to Jennifer Liotta.

(5) Includes (i) 633,297 shares of common stock issuable upon conversion of our Series A Preferred Stock (at an assumed conversion price of $6.32) held by Inventronics, of which Mr. Hua shares voting and dispositive control, and (ii) options to purchase 65,044 shares of common stock.

(6) Includes 369,863 shares of common stock held by R&T Trust, of which Li Chen is the trustee and holds voting and dispositive power over such shares. The address of R&T Trust is 18 Walker Drive, Princeton, NJ.

(7) Includes (i) 316,648 shares of common stock issuable upon conversion of our Series A Preferred Stock (at an assumed conversion price of $6.32), (ii) 316,648 shares of common stock issuable upon conversion of a $2,000,000 convertible promissory note (at an assumed conversion price of $6.32) and (iii) warrants to purchase 200,000 shares of common stock associated with our 2020 convertible promissory notes. Zhu Yue-Mei holds voting and dispositive power over the shares held by Win-Light Global Co., Ltd. The address of Win-Light Global Co., Ltd. is Unit 8, 3/F Qwomar Trading Center, Blackburne Road, Road Town, Tortola, BVI VG1110.

(8) Includes (i) 443,308 shares of common stock issuable upon conversion of a $2,800,000 convertible promissory note (at an assumed conversion price of $6.32) and (iii) warrants to purchase 280,000 shares of common stock associated with our 2020 convertible promissory notes. Weng Ming holds voting and dispositive power over the shares held by Jesan Capital Company Limited. The address of Jesan Capital Company Limited is Flt B12/F, Tower 1 Starcrest, 9 Star Street, Wanchai, Hong Kong.

(9) Nicholas Cooper holds voting and dispositive power over the shares held by Hoop Ventures LLC. The address of Hoop Ventures LLC is 15400 SE 44th Place, Bellevue, WA, 98006.

(10) Includes (i) 158,324 shares of common stock issuable upon conversion of a $1,000,000 convertible promissory note (at an assumed conversion price of $6.32) and (iii) warrants to purchase 100,000 shares of common stock associated with our 2020 convertible promissory notes. The address of Advanced Glory Holding Limited (BVI) is 5F-1, No.135, Sec.2, Xinyi Rd., Zhongzheng Dist., Taipei City 100, Taiwan.

(11) Includes (i) 237,486 shares of common stock issuable upon conversion of a $1,500,000 convertible promissory note (at an assumed conversion price of $6.32) and (iii) warrants to purchase 150,000 shares of common stock associated with our 2020 convertible promissory notes. The address of Golden Success HK Limited is Construction Bank Shenzen Branch Guo Hui Sub-Branch 1/F, A Tower, International Commercial Building, Fu Hua 1ED, Fu Tian District, Shenzen, China.

DESCRIPTION OF SECURITIES

General

Our articles of incorporation authorizes the issuance of up to 50,000,000 shares of common stock, par value $0.001 per share, and 3,000,000 shares of preferred stock, par value $0.001 per share.

Common Stock

As of the date of this prospectus, there were 6,662,028 shares of common stock outstanding, warrants to purchase 1,250,000 shares of our common stock associated with our 2020 convertible promissory notes and 4,951,085 shares of common stock subject to outstanding options. An additional [_____] shares of common stock will be issued immediately prior to the closing of this offering upon the conversion of outstanding shares of Series A Preferred Stock and outstanding convertible promissory notes based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%. Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of the stockholders, including the election of directors. Our articles of incorporation and bylaws do not provide for cumulative voting rights.

Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of our outstanding shares of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock.

Holders of our common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that are outstanding or that we may designate and issue in the future.

Preferred Stock

There are currently 100,000 shares of Series A Preferred Stock outstanding. Such shares will automatically convert into [_____] shares of common stock upon the consummation of this offering based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share divided by (ii) [_____] (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%.

Our board of directors is empowered, without stockholder approval, to issue shares of preferred stock with dividend, liquidation, redemption, voting or other rights which could adversely affect the voting power or other rights of the holders of common stock. In addition, the preferred stock could be utilized as a method of discouraging, delaying or preventing a change in control of us. Although we do not currently intend to issue any shares of preferred stock, we cannot assure you that we will not do so in the future.

Options

We currently have outstanding options to purchase 4,951,085 shares of our common stock.

Warrants

We currently have outstanding warrants to purchase 1,250,000 shares of our common stock.

Transfer Agent

The transfer agent for our common stock is Broadridge Financial Solutions, Inc., 51 Mercedes Way, Edgewood, New York 11717.

Listing

We have applied to have our common stock listed on the NASDAQ Capital Market under the symbol "AGFY." We will not proceed with this offering in the event our common stock is not approved for listing on NASDAQ.

Holders

As of the date of this prospectus, there were 6,662,028 shares of common stock outstanding, which were held by approximately [__] record stockholders.

Anti-takeover Effects of Our Articles of Incorporation and By-laws

Our articles of incorporation and bylaws contain certain provisions that may have anti-takeover effects, making it more difficult for or preventing a third party from acquiring control of our company or changing our Board and management. The holders of our common stock do not have cumulative voting rights in the election of our directors, which makes it more difficult for minority stockholders to be represented on the Board. Our articles of incorporation allow our Board to issue additional shares of our common stock and new series of preferred stock without further approval of our stockholders. The existence of authorized but unissued shares of common stock and preferred could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger, or otherwise.

Anti-takeover Effects of Nevada Law

Business Combinations

The "business combination" provisions of Sections 78.411 to 78.444, inclusive, of the Nevada Revised Statutes, or NRS, generally prohibit a Nevada corporation with at least 200 stockholders of record, a "resident domestic corporation," from engaging in various "combination" transactions with any "interested stockholder" unless certain conditions are met or the corporation has elected in its articles of incorporation to not be subject to these provisions. We have not elected to opt out of these provisions and if we meet the definition of resident domestic corporation, now or in the future, our company will be subject to these provisions.

A "combination" is generally defined to include (a) a merger or consolidation of the resident domestic corporation or any subsidiary of the resident domestic corporation with the interested stockholder or affiliate or associate of the interested stockholder; (b) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, by the resident domestic corporation or any subsidiary of the resident domestic corporation to or with the interested stockholder or affiliate or associate of the interested stockholder having: (i) an aggregate market value equal to 5% or more of the aggregate market value of the assets of the resident domestic corporation, (ii) an aggregate market value equal to 5% or more of the aggregate market value of all outstanding shares of the resident domestic corporation, or (iii) 10% or more of the earning power or net income of the resident domestic corporation; (c) the issuance or transfer in one transaction or series of transactions of shares of the resident domestic corporation or any subsidiary of the resident domestic corporation having an aggregate market value equal to 5% or more of the resident domestic corporation to the interested stockholder or affiliate or associate of the interested stockholder; and (d) certain other transactions with an interested stockholder or affiliate or associate of the interested stockholder.

An "interested stockholder" is generally defined as a person who, together with affiliates and associates, owns (or within two years, did own) 10% or more of a corporation's voting stock. An "affiliate" of the interested stockholder is any person that directly or indirectly through one or more intermediaries is controlled by or is under common control with the interested stockholder. An "associate" of an interested stockholder is any (a) corporation or organization of which the interested stockholder is an officer or partner or is directly or indirectly the beneficial owner of 10% or more of any class of voting shares of such corporation or organization; (b) trust or other estate in which the interested stockholder has a substantial beneficial interest or as to which the interested stockholder serves as trustee or in a similar fiduciary capacity; or (c) relative or spouse of the interested stockholder, or any relative of the spouse of the interested stockholder, who has the same home as the interested stockholder.

If applicable, the prohibition is for a period of two years after the date of the transaction in which the person became an interested stockholder, unless such transaction is approved by the board of directors prior to the date the interested stockholder obtained such status; or the combination is approved by the board of directors and thereafter is approved at a meeting of the stockholders by the affirmative vote of stockholders representing at least 60% of the outstanding voting power held by disinterested stockholders; and extends beyond the expiration of the two-year period, unless (a) the combination was approved by the board of directors prior to the person becoming an interested stockholder; (b) the transaction by which the person first became an interested stockholder was approved by the board of directors before the person became an interested stockholder; (c) the transaction is approved by the affirmative vote of a majority of the voting power held by disinterested stockholders at a meeting called for that purpose no earlier than two years after the date the person first became an interested stockholder; or (d) if the consideration to be paid to all stockholders other than the interested stockholder is, generally, at least equal to the highest of: (i) the highest price per share paid by the interested stockholder within the three years immediately preceding the date of the announcement of the combination or in the transaction in which it became an interested stockholder, whichever is higher, plus compounded interest and less dividends paid, (ii) the market value per share of common shares on the date of announcement of the combination and the date the interested stockholder acquired the shares, whichever is higher, plus compounded interest and less dividends paid, or (iii) for holders of preferred stock, the highest liquidation value of the preferred stock, plus accrued dividends, if not included in the liquidation value. With respect to (i) and (ii) above, the interest is compounded at the rate for one-year United States Treasury obligations from time to time in effect.

Applicability of the Nevada business combination statute would discourage parties interested in taking control of our company if they cannot obtain the approval of our Board. These provisions could prohibit or delay a merger or other takeover or change in control attempt and, accordingly, may discourage attempts to acquire our company even though such a transaction may offer our stockholders the opportunity to sell their stock at a price above the prevailing market price.

Control Share Acquisitions

The "control share" provisions of Sections 78.378 to 78.3793, inclusive, of the NRS, apply to "issuing corporations" that are Nevada corporations with at least 200 stockholders of record, including at least 100 stockholders of record who are Nevada residents, and that conduct business directly or indirectly in Nevada, unless the corporation has elected to not be subject to these provisions.

The control share statute prohibits an acquirer of shares of an issuing corporation, under certain circumstances, from voting its shares of a corporation's stock after crossing certain ownership threshold percentages, unless the acquirer obtains approval of the target corporation's disinterested stockholders. The statute specifies three thresholds: (a) one-fifth or more but less than one-third, (b) one-third but less than a majority, and (c) a majority or more, of the outstanding voting power. Generally, once a person acquires shares in excess of any of the thresholds, those shares and any additional shares acquired within 90 days thereof become "control shares" and such control shares are deprived of the right to vote until disinterested stockholders restore the right. These provisions also provide that if control shares are accorded full voting rights and the acquiring person has acquired a majority or more of all voting power, all other stockholders who do not vote in favor of authorizing voting rights to the control shares are entitled to demand payment for the fair value of their shares in accordance with statutory procedures established for dissenters' rights.

A corporation may elect to not be governed by, or "opt out" of, the control shares provisions by making an election in its articles of incorporation or bylaws, provided that the opt-out election must be in place on the 10th day following the date an acquiring person has acquired a controlling interest, that is, crossing any of the three thresholds described above. We have not opted out of these provisions and will be subject to the control share provisions of the NRS if we meet the definition of an issuing corporation upon an acquiring person acquiring a controlling interest unless we later opt out of these provisions and the opt out is in effect on the 10th day following such occurrence.

The effect of the Nevada control share statute is that the acquiring person, and those acting in association with the acquiring person, will obtain only such voting rights in the control shares as are conferred by a resolution of the stockholders at an annual or special meeting. The Nevada control share law, if applicable, could have the effect of discouraging takeovers of our company.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, no public market for our common stock existed, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices of our common stock from time to time and could impair our future ability to raise equity capital in the future. Furthermore, because only a limited number of shares of our common stock will be available for sale shortly after this offering due to certain contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after such restrictions lapse, or the anticipation of such sales, could adversely affect the prevailing market price of our common stock and our ability to raise equity capital in the future.

Based upon the number of shares outstanding as of _____, 2020, upon the closing of this offering, we will have outstanding an aggregate of _____ shares of common stock, assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options, after giving effect to the conversion of all outstanding shares of our Series A Preferred Stock and convertible promissory notes into _____ shares of common stock immediately prior to the closing of this offering based on a conversion formula equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the public offering price per share multiplied by the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis, divided by (ii) _____ (which represents the total number of outstanding shares of common stock immediately prior to the consummation of this offering on a fully diluted as-converted basis); provided, however, in the event the closing of this offering does not occur by December 31, 2020, the conversion price shall be adjusted to equal the product of (a) the conversion price then in effect immediately prior to such adjustment and (b) 85%. All of the shares sold in this offering by us will be freely tradable without restrictions or further registration under the Securities Act, unless held by our affiliates, as that term is defined under Rule 144 under the Securities Act, or subject to lock-up agreements. The remaining shares of common stock outstanding upon the closing of this offering are restricted securities as defined in Rule 144. Restricted securities may be sold in the U.S. public market only if registered or if they qualify for an exemption from registration, including by reason of Rule 144 or Rule 701 under the Securities Act, which rules are summarized below. These remaining shares will generally become available for sale in the public market as follows:

- no shares will be eligible for sale in the public market on the date of this prospectus; and
- approximately _____shares will be eligible for sale in the public market upon expiration of lock-up agreements 181 days after the date of this prospectus, subject in certain circumstances to the volume, manner of sale and other limitations of Rule 144 and Rule 701.

As of _____, 2020, of the _____ shares of common stock issuable upon exercise of outstanding options, approximately_____ shares will be vested and eligible for sale 181 days after the date of this prospectus.

We may issue shares of common stock from time to time as consideration for future acquisitions, investments or other corporate purposes. In the event that any such acquisition, investment or other transaction is significant, the number of shares of common stock that we may issue may in turn be significant. We may also grant registration rights covering those shares of common stock issued in connection with any such acquisition and investment.

In addition, the shares of common stock reserved for future issuance under our 2020 Plan will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements, a registration statement under the Securities Act or an exemption from registration, including Rule 144 and Rule 701.

Rule 144

In general, persons who have beneficially owned restricted shares of our common stock for at least six months, and any affiliate of the company who owns either restricted or unrestricted shares of our common stock, are entitled to sell their securities without registration with the SEC under an exemption from registration provided by Rule 144 under the Securities Act.

In general, a person who has beneficially owned restricted shares of our common stock for at least six months would be entitled to sell their securities provided that (1) such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale, (2) we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale and (3) we are current in our Exchange Act reporting at the time of sale.

Persons who have beneficially owned restricted shares of our common stock for at least six months, but who are our affiliates at the time of, or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately _____ shares immediately after the closing of this offering based on the number of common shares outstanding as of _____, 2020.
- the average weekly trading volume of our common stock on _____during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Such sales by affiliates must also comply with the manner of sale, current public information and notice provisions of Rule 144.

Rule 701

In general, under Rule 701, a person who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been one of our affiliates during the immediately preceding 90 days may sell these shares in reliance upon Rule 144, but without being required to comply with the notice, manner of sale, public information requirements or volume limitation provisions of Rule 144. Rule 701 also permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701. As of the date of this prospectus, no shares of our outstanding common stock had been issued in reliance on Rule 701 as a result of exercises of stock options. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Form S-8 Registration Statements

Following this offering, we intend to file with the SEC a registration statement on Form S-8 under the Securities Act to register the offer and sale of shares of our common stock that are issuable pursuant to our 2020 Plan. Shares covered by this registration statement on Form S-8 will then be eligible for sale in the public markets, subject to vesting restrictions, any applicable lock-up agreements described below and Rule 144 limitations applicable to affiliates.

Lock-Up Arrangements

We, all of our directors and executive officers and holders of one percent (1%) or more of our outstanding shares of common stock as of the effective date of the registration statement related to this offering (and all holders of securities exercisable for or convertible into shares of common stock), have agreed with the underwriters that, for a period of 180 days following the date of this prospectus, subject to certain exceptions, we and they will not, directly or indirectly, offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale, or otherwise dispose of or hedge any of our shares of common stock, any options, or any securities convertible into, or exchangeable for or that represent the right to receive shares of our common stock. These agreements are described in the section of this prospectus titled “Underwriting.”

Registration Rights

Holders of shares of our common stock issued upon conversion of our shares of Series A Preferred Stock simultaneously with the closing of this offering have piggyback registration rights with respect to such shares of common stock on any registration statements we file with the Securities and Exchange Commission, subject to certain limited exceptions.

UNDERWRITING

We are offering our shares of common stock described in this prospectus through the underwriters named below. Maxim Group LLC (or Maxim) is acting as the sole representative of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase, and we have agreed to sell to the underwriters, the number of shares of common stock listed next to its name in the following table.

Underwriters	Number of Shares
Maxim Group LLC	
Total	

The underwriting agreement provides that the underwriters must buy all of the shares of common stock if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters' option to purchase additional shares as described below.

Our shares of common stock are offered subject to a number of conditions, including:

- receipt and acceptance of our shares of common stock by the underwriters; and
- the underwriters' right to reject orders in whole or in part.

We have been advised by Maxim that the underwriters intend to make a market in our shares of common stock but that they are not obligated to do so and may discontinue making a market at any time without notice.

In connection with this offering, certain of the underwriters or securities dealers may distribute prospectuses electronically.

Option to Purchase Additional Shares

We have granted the underwriters an option to buy up to an aggregate of additional shares of common stock. The underwriters have 45 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each purchase additional shares of common stock approximately in proportion to the amounts specified in the table above.

Underwriting Discount

Shares sold by the underwriters to the public will initially be offered at the initial offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. The underwriters may offer the shares through one or more of their affiliates or selling agents. If all the shares are not sold at the initial public offering price, Maxim may change the offering price and the other selling terms. Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein.

The underwriting discount is equal to the public offering price per share, less the amount paid by the underwriters to us per share. The underwriting discount was determined through an arms' length negotiation between us and the underwriters. We have agreed to sell the shares of common stock to the underwriters at the offering price of $[___] per share, which represents the public offering price of our shares set forth on the cover page of this prospectus less a 8.0% underwriting discount. With respect to certain investors, we have agreed to sell the shares of common stock to the underwriters at the offering price of $[___] per share, which represents the public offering price of our shares set forth on the cover page of this prospectus less a 3.5% underwriting discount.

The following table shows the per share and total underwriting discount we will pay to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase up to additional shares.

	No Exercise	Full Exercise
Per share	$	$
Total	$	$

	No Exercise	Full Exercise
Per share	$	$
Total	$	$

We have agreed to pay Maxim's out-of-pocket accountable expenses, including Maxim's legal fees, up to a maximum amount of $175,000, irrespective of whether the offering is consummated. We have paid $50,000 to Maxim as an advance to be applied towards reasonable out-of-pocket expenses (which we refer to as the Advance). Any portion of the Advance shall be returned back to us to the extent not actually incurred.

We estimate that the total expenses of the offering payable by us, not including the underwriting discount, will be approximately $[___] million. We have also agreed to reimburse the underwriters for certain expenses incurred by them.

Representative's Warrants

We have also agreed to issue to Maxim (or its permitted assignees) the warrants to purchase a number of our shares of common stock equal to an aggregate of 5% of the total number of shares of common stock sold in this offering (or Representative's Warrants). The Representative's Warrants will have an exercise price equal to 110% of the offering price of the shares of common stock sold in this offering and may be exercised on a cashless basis. The Representative's Warrants are exercisable commencing six (6) months after the effective date of the registration statement related to this offering, and will expire five years after such effective date. The Representative's Warrants are not redeemable by us. We have agreed to a one time demand registration of the shares of common stock underlying the Representative's Warrants for a period of five years from the effective date of the registration statement related to this offering. The Representative's Warrants also provide for unlimited "piggyback" registration rights at our expense with respect to the underlying shares of common stock during the five year period commencing from the effective date of the registration statement for this offering. The Representative's Warrants and the shares of common stock underlying the Representative's Warrants, have been deemed compensation by FINRA and are therefore subject to a 180-day lock-up pursuant to Rule 5110(g)(1) of FINRA. The underwriters (or permitted assignees under the Rule) may not sell, transfer, assign, pledge or hypothecate the Representative's Warrants or the securities underlying the Representative's Warrants, nor will they engage in any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the Representative's Warrants or the underlying securities for a period of 180 days from the effective date of this offering, except to any FINRA member participating in the offering and their bona fide officers or partners. The Representative's Warrants will provide for adjustment in the number and price of such Representative's Warrants (and the shares of common stock underlying such Representative's Warrants) to prevent dilution in the event of a forward or reverse stock split, stock dividend or similar recapitalization.

Right of First Refusal

We have agreed to grant Maxim, for the twelve (12) month period following the effective date of the registration statement related to this offering, a right of first refusal to act as lead managing underwriter and book runner for any and all future public or private equity, equity-linked offerings during such twelve (12) month period by us, or any successor to or any subsidiary of our company subject to such procedures as agreed upon in the underwriting agreement.

Lock-Up Agreements

We and our directors, officers and holders of one percent (1%) or more of our outstanding shares of common stock as of the effective date of the registration statement related to this offering (and all holders of securities exercisable for or convertible into shares of common stock) shall enter into customary "lock-up" agreements in favor

of Maxim pursuant to which such persons and entities shall agree, for a period of 180 days after the effective date of the registration statement related to this offering, that they shall neither offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any of our securities without Maxim's prior written consent, including the issuance of shares of common stock upon the exercise of currently outstanding convertible securities.

Indemnification

We have agreed to indemnify the several underwriters against certain liabilities, including certain liabilities under the Securities Act. If we are unable to provide this indemnification, we have agreed to contribute to payments the underwriters may be required to make in respect of those liabilities.

Other Relationships

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

No Public Market

Prior to this offering, there has not been a public market for our securities in the U.S. and the public offering price for our securities will be determined through negotiations between us and the underwriters. Among the factors to be considered in these negotiations will be prevailing market conditions, our financial information, market valuations of other companies that we and the underwriters believe to be comparable to us, estimates of our business potential, the present state of our development and other factors deemed relevant.

We offer no assurances that the initial public offering price will correspond to the price at which our securities will trade in the public market subsequent to this offering or that an active trading market for our securities will develop and continue after this offering.

Stock Exchange

We have applied to have our shares of common stock approved for listing on the NASDAQ Capital Market under the symbol "AGFY." We will not proceed with this offering in the event our common stock is not approved for listing on NASDAQ.

Price Stabilization, Short Positions

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our shares of common stock during and after this offering, including:

- stabilizing transactions;
- short sales;
- purchases to cover positions created by short sales;
- imposition of penalty bids; and
- syndicate covering transactions.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our shares of common stock while this offering is in progress. Stabilization transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. These transactions may also include making short sales of our shares of common stock, which involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering and purchasing shares of common stock on the open market to cover short positions created by short sales. Short sales may be "covered short sales," which are short positions in an amount not greater than the underwriters' option to purchase additional shares referred to above, or may be "naked short sales," which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are short sales made in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares of common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because Maxim has repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

These stabilizing transactions, short sales, purchases to cover positions created by short sales, the imposition of penalty bids and syndicate covering transactions may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. The underwriters may carry out these transactions on the NASDAQ Capital Market, in the over-the-counter market or otherwise. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of the shares. Neither we, nor any of the underwriters make any representation that the underwriters will engage in these stabilization transactions or that any transaction, once commenced, will not be discontinued without notice.

Determination of Offering Price

Prior to this offering, there was no public market for our shares of common stock. The initial public offering price will be determined by negotiation among us and Maxim. The principal factors to be considered in determining the initial public offering price include:

- the information set forth in this prospectus and otherwise available to Maxim;
- our history and prospects and the history and prospects for the industry in which we compete;
- our past and present financial performance;
- our prospects for future earnings and the present state of our development;
- the general condition of the securities market at the time of this offering;
- the recent market prices of, and demand for, publicly traded shares of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

The estimated public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors. Neither we nor the underwriters can assure investors that an active trading market will develop for our shares of common stock or that the shares of common stock will trade in the public market at or above the initial public offering price.

Affiliations

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters and their affiliates may from time to time in the future engage with us and perform services for us or in the ordinary course of their business for which they will receive customary fees and expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments

(including bank loans) for their own account and for the accounts of their customers, and such investment and securities activities may involve securities and/or instruments of us. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of these securities or instruments and may at any time hold, or recommend to clients that they acquire, long and/or short positions in these securities and instruments.

Electronic Distribution

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by one or more of the underwriters participating in this offering, or by their affiliates. In those cases, prospective investors may view offering terms online and, depending upon the particular underwriter, prospective investors may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations. Other than the prospectus in electronic format, the information on any underwriter's website and any information contained in any other website maintained by an underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter in its capacity as underwriter and should not be relied upon by investors.

Selling Restrictions

Canada. The securities may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31 103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus supplement (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33 105 *Underwriting Conflicts* (NI 33 105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriters conflicts of interest in connection with this offering.

European Economic Area. In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State") an offer to the public of any securities may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any securities may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall result in a requirement for the publication by us or any underwriters of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer to the public" in relation to any securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and any securities to be offered so as to enable an investor to decide to purchase any securities, as

the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

United Kingdom. Each underwriter has represented and agreed that:

- it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the *FSMA*) received by it in connection with the issue or sale of the securities in circumstances in which Section 21(1) of the FSMA does not apply to us; and
- it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the securities in, from or otherwise involving the United Kingdom.

Switzerland. The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (the *SIX*) or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the securities or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, or the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, and the offer of securities has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes (*CISA*). Accordingly, no public distribution, offering or advertising, as defined in CISA, its implementing ordinances and notices, and no distribution to any non-qualified investor, as defined in CISA, its implementing ordinances and notices, shall be undertaken in or from Switzerland, and the investor protection afforded to acquirers of interests in collective investment schemes under CISA does not extend to acquirers of securities.

Australia. No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission (*ASIC*), in relation to the offering.

This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the *Corporations Act*) and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the securities may only be made to persons (the *Exempt Investors*) who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the securities without disclosure to investors under Chapter 6D of the Corporations Act.

The securities applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring securities must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

LEGAL MATTERS

The validity of the shares of our common stock offered hereby has been passed upon for us by Loeb & Loeb LLP, New York, NY. Ellenoff Grossman & Schole LLP, New York, NY, is acting as counsel to the underwriters.

EXPERTS

Marcum LLP, independent registered public accounting firm, has audited our financial statements at December 31, 2019 and 2018 as set forth in their report. We have included our financial statements in the prospectus and elsewhere in the registration statement in reliance on Marcum LLP's report which includes an explanatory paragraph about the existence of substantial doubt concerning our ability to continue as a going concern, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1, which includes amendments and exhibits, under the Securities Act and the rules and regulations under the Securities Act for the registration of common stock being offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all the information that is in the registration statement and its exhibits and schedules. Certain portions of the registration statement have been omitted as allowed by the rules and regulations of the SEC. Statements in this prospectus that summarize documents are not necessarily complete, and in each case you should refer to the copy of the document filed as an exhibit to the registration statement.

You may read and copy all or any portion of the registration statement at the SEC's website at *http://www.sec.gov*. We also maintain a website at *www.agrify.com*. The information contained on, or that can be accessed through, our website is not part of, and is not incorporated into, this prospectus. We have included our website in this prospectus solely as an inactive textual reference, and you should not consider the contents of our website in making an investment decision with respect to our common stock. The registration statement, including all exhibits and amendments to the registration statement, has been filed electronically with the SEC.

Upon completion of this offering, we will become subject to information and periodic reporting requirements of the Exchange Act and we will file annual, quarterly and current reports, proxy statements, and other information with the SEC.

Agrify Corporation
Index to Consolidated Financial Statements

TriGrow Systems, Inc. and Subsidiary
Index to Consolidated Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
Agrify Corporation and Subsidiary

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Agrify Corporation and Subsidiary (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, changes in stockholders' deficit and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019 and 2018, in conformity with accounting principles generally accepted in the United States of America.

Explanatory Paragraph — Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 2, the Company has a significant working capital deficiency, has incurred significant losses and needs to raise additional funds to meet its obligations and sustain its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Marcum LLP

We have served as the Company's auditor since 2019.

Melville, NY
March 19, 2020

AGRIFY CORPORATION AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	As of December 31,	
	2019	**2018**
Assets:		
Cash and cash equivalents	$ 206	$ 85
Inventory	2,481	2,111
Prepaid expenses and other receivables	366	—
Total current assets	3,053	2,196
Intangible assets	136	—
Property and Equipment, net	38	—
Total Assets	$ 3,227	$ 2,196
Liabilities and Stockholders' Deficit		
Current Liabilities:		
Accounts payable	$ 870	$ 1,703
Accrued expenses	355	—
Deferred revenue	2,807	2,118
Total current liabilities	4,032	3,821
Loan payable to related party	—	133
Total Liabilities	4,032	3,954
Commitments and contingencies (Note 14)		
Stockholders' Deficit		
Common stock, 6,500,000 shares, $0.001 par value authorized as of December 31, 2019 and 2018; 5,720,000 and 3,680,000 shares issued at December 31, 2019 and 2018, respectively	6	4
Additional paid in capital	4,122	89
Subscription receivable	(40)	—
Accumulated deficit	(4,893)	(1,851)
Total Stockholders' Deficit	(805)	(1,758)
Total Liabilities and Stockholders' Deficit	$ 3,227	$ 2,196

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share amounts)

	Years ended December 31,	
	2019	**2018**
Revenue, net	$ 4,088	$ 1,769
Cost of goods sold	4,333	1,547
Gross profit (loss)	(245)	222
OPERATING EXPENSES		
Research and development	109	17
Selling, general and administrative expenses	2,737	1,221
Total operating expenses	2,846	1,238
Operating loss	(3,091)	(1,016)
Miscellaneous income, net	49	2
Net loss	$ (3,042)	$ (1,014)

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARY
CONSOLIDATED STATEMENTS STOCKHOLDERS' EQUITY DEFICIT
(In thousands, except share amounts)

	common stock		Additional Paid-In Capital	Subscription Receivable	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance, January 1, 2018	3,680,000	$ 4	$ (4)	$ —	$ (837)	$ (837)
Conversion of notes payable	—	—	93	—	—	93
Net income	—	—	—	—	(1,014)	(1,014)
Balance, December 31, 2018	3,680,000	4	89	—	(1,851)	(1,758)
Stock based compensation	—	—	109	—	—	109
Issuance of common stock	2,040,000	2	3,924	—	—	3,926
Issuance of common stock	—	—	—	(40)	—	(40)
Net income	—	—	—	—	(3,042)	(3,042)
Balance, December 31, 2019	5,720,000	$ 6	$ 4,122	$ (40)	$ (4,893)	$ (805)

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	For the Year Ended December 31,	
	2019	**2018**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (3,042)	$ (1,014)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	10	—
Compensation in connection with the issuance of stock options	109	—
Non-cash interest expense	—	11
Changes in operating assets and liabilities:		
Accounts receivable	—	34
Inventory	(369)	(845)
Prepaid expenses and other receivables	(366)	—
Accounts payable	(833)	841
Accrued expenses	355	
Deferred revenue	695	1,022
Net cash provided by (used in) operating activities	(3,441)	49
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(41)	—
Purchase of intangible assets	(143)	—
Net cash used in investing activities	(184)	—
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	3,879	—
Repayment of loan with a related party	(133)	—
Net cash provided by financing activities	3,746	—
Net increase in cash	121	49
Cash – Beginning of Year	85	36
Cash – End of Year	$ 206	$ 85
SUPPLEMENTARY CASH FLOW INFORMATION:		
Cash Paid During the Period for:		
Interest	$ 11,091	$ 5,096

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 1 — Nature of Business and Basis of Presentation

Nature of Business

Agrify Corporation ("Agrify" or the "Company") is a developer of highly advanced and proprietary precision hardware and software grow solutions for the indoor agriculture marketplace. The Company was formed in the State of Nevada on June 6, 2016 as Agrinamics, Inc., and subsequently changed its name to Agrify Corporation. The Company is sometimes referred to herein by the words "we," "us", "our" and similar terminology.

Note 2 — Summary of Significant Accounting Policies

Accounting for wholly-owned subsidiaries

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of the Company and its wholly owned subsidiary, AGM Service Corp Inc, in accordance with the provisions required by the Consolidation Topic 810 of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). All significant intercompany accounts and transactions have been eliminated in the preparation of the consolidated financial statements.

Accounting for joint-venture subsidiary

For the Company's less than wholly owned joint venture subsidiary, Agrify Valiant LLC, the Company first analyzes whether this joint venture is a variable interest entity (a "VIE") in accordance with ASC 810 and if so, whether the Company is the primary beneficiary requiring consolidation. A VIE is an entity that has (i) insufficient equity to permit it to finance its activities without additional subordinated financial support or (ii) equity holders that lack the characteristics of a controlling financial interest. VIEs are consolidated by the primary beneficiary, which is the entity that has both the power to direct the activities that most significantly impact the entity's economic performance and the obligation to absorb losses or the right to receive benefits from the entity that potentially could be significant to the entity. Variable interests in a VIE are contractual, ownership, or other financial interests in a VIE that change with changes in the fair value of the VIE's net assets. The Company continuously re-assesses (i) whether the joint venture is a VIE, and (ii) if the Company is the primary beneficiary of the VIE. If it is determined that the joint venture qualifies as a VIE and the Company is the primary beneficiary, it is consolidated.

Based on the Company's analysis for this joint venture, the Company has determined that it is a VIE and that the Company is the primary beneficiary. While the Company owns 60% of the equity interest in the joint venture, the other 40% is owned by an unrelated third party, and the joint venture agreement with that third party provides the Company with greater voting rights. Accordingly, the Company consolidates its joint venture under the VIE rules and reflects the third party's 40% interest in the consolidated financial statements as a non-controlling interest. The Company records this non-controlling interest at its initial fair value, adjusting the basis prospectively for the third party's share of the respective consolidated investments' net income or loss or equity contributions and distributions. This non-controlling interest is not redeemable by the equity holders and is presented as part of permanent equity. Income and losses are allocated to the non-controlling interest holder based on its economic ownership percentage.

As of December 31, 2019, Agrify Valiant LLC did not begin its operations.

Going Concern and Management's Plan

The Company has evaluated whether there are certain conditions and events, considered in the aggregate, that raise substantial doubt and the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

Since its inception, the Company has funded its operations primarily with cash flows from product sales and proceeds from sales of common stock (including proceeds from convertible debt, which converted into common stock). The Company has not historically generated sufficient income to fund operations, including a

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Note 2 — Summary of Significant Accounting Policies (cont.)

net loss of $3,042 and net income of $1,014 for the years ended December 31, 2019 and 2018, respectively. The Company expects to generate net income and cash flow from operating activities in the foreseeable future. During January 2020, the Company issued 55,000 shares of Series A Convertible Preferred Stock for a total $5,500,000 reflecting a per share price of $100 (see additional information in Note 12). As of the date of issuance of the annual consolidated financial statements for the year ended December 31, 2019, the Company expects that its cash and cash equivalents of $206 as of December 31, 2019 and the additional capital from the issuance of the Series A Convertible Preferred Stock would be sufficient to fund its operating expenses, capital expenditure requirements for the foreseeable future. The future viability of the Company beyond that point is dependent on its ability to increase sales sufficiently to fund operations or raise additional capital to finance its operations.

If the Company is unable to obtain funding, the Company will be forced to delay, reduce or eliminate some or all of its product portfolio expansion or commercialization efforts and research and development programs, which could adversely affect its business prospects, or the Company may be unable to continue operations. Although management continues to pursue these plans, there is no assurance that the Company will be successful in obtaining sufficient funding on terms acceptable to the Company to fund continuing operations, if at all.

Based on its recurring losses from operations incurred or insufficient income to fund operations since inception, expectation of continuing operating losses for the foreseeable future, and need to raise additional capital to finance its future operations, the Company has concluded that there is substantial doubt about its ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. Accordingly, the consolidated financial statements have been prepared on a basis that assumes the Company will continue as a going concern and which contemplates the realization of assets and satisfaction of liabilities and commitments in the ordinary course of business.

Use of Estimates

The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions reflected in these consolidated financial statements include, but are not limited to, the accrual of expenses. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. On an ongoing basis, management evaluates its estimates when there are changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates.

Fiscal Year

The Company, and its Subsidiary's, fiscal year ends on December 31st of each year.

Cash and Cash Equivalents

Cash and cash equivalents consist principally of cash and deposits with maturities of three months or less as December 31, 2019 and 2018.

Concentration of Credit Risk and Significant Customer

Financial instruments that potentially subject the Company to concentration of credit risk primarily consist of cash, cash equivalents, and accounts receivable. The Company places its cash with financial institutions in the United States. The cash balances are insured by the FDIC up to $250 per depositor with unlimited insurance for funds in noninterest-bearing transaction accounts through December 31, 2019. At times, the amounts in these

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Note 2 — Summary of Significant Accounting Policies (cont.)

accounts may exceed the federally insured limits. Revenue is primarily from product sales and royalty revenue. Two customers represented 99% and one customer represented 95% of total sales for the years ended December 31, 2019 and 2018, respectively.

Accounts Receivable

Accounts receivable are recorded at net realizable value consisting of the carrying amount less the allowance for uncollectible accounts. The Company evaluates its accounts receivable on a continuous basis, and if necessary, establishes an allowance for doubtful accounts based on a number of factors, including current credit conditions and customer payment history. The Company does not require collateral or accrue interest on accounts receivable. Accounts receivable at December 31, 2019 and 2018 are $0 and $0, respectively. No allowance for doubtful accounts was deemed necessary as of December 31, 2019 and 2018. There was no bad debt expense for 2019 and 2018.

Inventory

Inventories, which are stated at the lower of cost or net realizable value, consist primarily of supplies. Cost is determined using the weighted average method.

The Company purchased various equipment from 4D Bios Inc. (“4D”), which totalled $1,393 and $0 in 2019 and 2018, respectively. A member of the Company’s board and the Company’s Chief Executive Officer both had ownership interests and were board members of 4D.

On June 7, 2019, the Company entered into a distribution agreement with Bluezone Products, Inc. (“Bluezone”) for distribution rights to the Bluezone products with certain exclusivity rights. The agreement requires minimum purchases amounting to $480 and $570 for the first and second contract anniversary years. The agreement auto renews for successive one year periods unless earlier terminated. The Company purchased approximately $318 of Bluezone products for the year ended December 31, 2019. A member of the board and the Company’s Chief Executive Officer both had ownership interests and were board members of Bluezone.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expenses are recognized using the straight-line method over the estimated useful life of each asset, as follows:

	Estimated Useful Life (Years)
Computer equipment and software	2
Furniture and fixture	5
Machinery	5

Estimated useful lives are periodically assessed to determine if changes are appropriate. Maintenance and repairs are charged to expense as incurred. When assets are retired or otherwise disposed of, the cost of these assets and related accumulated depreciation or amortization are eliminated from the consolidated balance sheet and any resulting gains or losses are included in the consolidated statement of operations in the period of disposal. Costs for capital assets not yet placed into service are capitalized as construction-in-progress and depreciated once placed into service.

Impairment of Long-Lived Assets

When circumstances, such as adverse market conditions, indicate that the carrying value of a long-lived asset may be impaired, the Company performs an analysis to review the recoverability of the asset’s carrying value, which includes estimating the undiscounted cash flows (excluding interest charges) from the expected future operations of the asset.

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Note 2 — Summary of Significant Accounting Policies (cont.)

These estimates consider factors such as expected future operating income, operating trends and prospects, as well as the effects of demand, competition and other factors. If the analysis indicates that the carrying value is not recoverable from future cash flows, an impairment loss is recognized to the extent that the carrying value exceeds the estimated fair value. Any impairment losses are recorded as operating expenses, which reduce net income. The Company did not record any impairment losses on long lived assets during the years ended December 31, 2018 or 2019.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses. The estimated fair value of the accounts receivable and accounts payable approximates their carrying value due to the short-term nature of these instruments.

Intangible Assets

The Company uses assumptions in establishing the carrying value of its intangible assets. Intangible assets resulted from investment in the Company's website and trademark.

Investments in the Company's website are amortized over their estimated useful lives of 10 years. As of December 31, 2019, and 2018, amortizable intangible assets were $143 and $0, and accumulated amortization was $7 and $0, respectively. Intangible and other long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable. Recoverability is determined by comparing the forecasted future net cash flows from the operations to which the assets relate, based on management's best estimates using the appropriate assumptions and projections at the time, to the carrying amount of the assets. If the carrying value is determined to be in excess of future operating cash flows, the asset is considered impaired and a loss is recognized equal to the amount by which the carrying amount exceeds the estimated fair value of the assets. As of December 31, 2019, no impairment existed.

Revenue Recognition

In accordance with Topic 606, we account for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which we are entitled. Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

We generate revenue from the following sources: (1) equipment sales and (2) services sales. We sell our equipment and services to customers under a combination of a contract and purchase order.

Equipment revenue includes sales from proprietary products designed and engineered by the Company such as vertical farming units, integrated grow racks, and LED grow lights, and non-proprietary products designed, engineered, and manufactured by third parties such as air cleaning systems and pesticide-free surface protection. For proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of royalties based on contractual percentage of the net selling price of any proprietary product sold by our customers. For non-proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of revenue share based on a contractual percentage of gross margin of any non-proprietary product sold by our customers. We do not offer a right of return for sales of equipment.

Service revenue includes sales from cloud-based solutions that allow customers to use hosted software over the contract period without taking possession of the software and are provided on a subscription basis with technical support. The transaction price is variable consideration in the form of a monthly fee determined at contract inception based on the total number of active software users. We offer service credits in those instances where software uptime does not meet predetermined performance thresholds.

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Note 2 — Summary of Significant Accounting Policies (cont.)

Variable consideration in the form of royalties, revenue share, monthly fees, and service credits are estimated at contract inception and updated at the end of each reporting period if additional information becomes available. Variable consideration is typically not subject to constraint. Changes to variable consideration were not material for the periods presented.

The Company typically satisfies its performance obligations for equipment sales when equipment is made available for shipment to the customer. The Company typically satisfies its performance obligations for services sales as services are rendered to the customer. We enter contracts that can include various combinations of equipment and services, which are generally capable of being distinct and accounted for as separate performance obligations.

We allocate total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price we would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

Other Policies and Judgments — The Company has elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfillment cost and not as a promised good or service. Accordingly, the Company will accrue all fulfillment costs related to the shipping and handling of consumer goods at the time of shipment. The Company has payment terms with its customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes we collect concurrent with revenue-producing activities are excluded from revenue.

Disaggregation of Revenue — The following table provides revenue disaggregated by timing of revenue recognition (in thousands):

	Year ended December 31,	
	2019	2018
Transferred at a point in time	$ 4,066	$ 1,769
Transferred over time	22	—
	$ 4,088	$ 1,769

Contract Balances — The Company receives payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of our deferred revenue primarily results from the timing difference between our performance and the customer's payment. We fulfill our obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. We recognize deferred revenue when we have received consideration or an amount of consideration is due from the customer and we have a future obligation to transfer certain proprietary products.

In accordance with ASC 606-10-50-13, the Company is required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of the Company's contracts, these reporting requirements are not applicable. The majority of the Company's remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

The Company generally provides a one-year warranty on its products for materials and workmanship but may provide multiple year warranties as negotiated, and will pass on the warranties from its vendors, if any, which generally covers this one year period. In accordance with ASC 450-20-25, the Company accrues for product warranties when the loss is probable and can be reasonably estimated. At December 31, 2019, the Company has no product warranty accrual given the Company's de minimis historical financial warranty experience.

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Note 2 — Summary of Significant Accounting Policies (cont.)

Income Taxes

The Company accounts for income taxes pursuant to the provisions of ASC Topic 740, "Income Taxes," which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred asset will not be realized.

The Company follows the provisions of ASC 740-10-25-5, "Basic Recognition Threshold." When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits. As of December 31, 2019, tax years 2016 through 2017 remain open for IRS audit. The Company has received no notice of audit from the IRS for any of the open tax years.

The Company recognizes the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, "Basic Recognition Threshold" provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, the Company recognizes the full amount of the tax benefit.

As of 1/1/2018 the Company has no NOLs. There was no Federal income tax expense for the years ended December 31, 2019 and 2018 due to the Company's net losses. The Company has not yet filed its 2018 Federal and State tax returns.

Equity Method Investments

Investments in non-public companies in which the Company owns less than a 50% equity interest and where it has the ability to exercise significant influence over the operating and financial policies of the investee are accounted for using the equity method of accounting. The Company's proportionate share of the net income or loss of the equity method investment is included in other income (expense), net in the consolidated statement of operations and comprehensive loss and results in a corresponding adjustment to the carrying value of the investment on the consolidated balance sheet. Dividends received reduce the carrying value of the investment.

An assessment of whether or not we have the power to direct activities that most significantly impact Teejan Podponics International LLC's ("TPI") economic performance and to identify the party that obtains the majority of the benefits of the investment was performed as of December 31, 2019 and 2018, and will be performed as of each subsequent reporting date. After each of these assessments, we concluded that the activities that most significantly impact TPI's economic performance are the growth, marketing, sale, and distribution of products using Podponics' technology and IP, each of which are directed by TPI. Based on the outcome of these assessments, we concluded that our investment in TPI should be accounted for under the equity method.

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Note 2 — Summary of Significant Accounting Policies (cont.)

The carrying value of the Company's investment in TPI was $0 as of December 31, 2019 and 2018.

The Company did not recognize revenue from TPI for the years ended December 31, 2019 and 2018.

Research and Development Costs

The Company expenses research and development costs as incurred.

Shipping and Handling Charges

The Company incurs costs related to shipping and handling of its manufactured products. These costs are expensed as incurred as a component of cost of sales. Shipping and handling charges related to the receipt of raw materials are also incurred, which are recorded as a cost of the related inventory.

Note 3 — Recently Adopted Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"). The standard provides companies with a single model for use in accounting for revenue arising from contracts with customers and supersedes current revenue recognition guidance, including industry-specific revenue guidance. The core principle of the model is to recognize revenue when control of the goods or services transfers to the customer in an amount that reflects the consideration that is expected to be received for those goods or services. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606) — Deferral of the Effective Date, which deferred the effective date of ASU 2014-09 until annual reporting periods beginning after December 15, 2017. Early adoption is not permitted. The guidance permits companies to either apply the requirements retrospectively to all prior periods presented, or apply the requirements in the year of adoption, through a cumulative adjustment.

We adopted ASU 2014-09 effective January 1, 2019 using the full retrospective method. The Company's assessment efforts included an evaluation of certain revenue contracts with customers. The Company's adoption of ASU 2014-09 did not an impact on the results of operations or financial position; therefore, there was no adjustment to previously reported results. In August 2014, the Financial Accounting Standards Board ("FASB") issued ASU No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"). The amendments in this update explicitly require a company's management to assess an entity's ability to continue as a going concern and to provide related footnote disclosures in certain circumstances. For both public and nonpublic entities, the new standard is effective for annual periods ending after December 15, 2016 and for interim periods thereafter. The Company adopted ASU 2014-15 as of the required effective date. This guidance relates to footnote disclosure only, and its adoption had no impact on the Company's consolidated financial position, results of operations or cash flows.

In November 2015, the FASB issued ASU No. 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes* ("ASU 2015-17"). ASU 2015-17 requires deferred tax liabilities and assets to be classified as non-current on the consolidated balance sheet. The amendment may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented. The Company adopted ASU 2015-17 as of December 31, 2019 and reflected the adoption retrospectively to all periods presented, and its adoption had no impact on the Company's consolidated financial position, results of operations or cash flows.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash* ("ASU 2016-18"), which requires that the statement of cash flows explain the change during the period in the total of cash, cash equivalents and amounts generally described as restricted cash or restricted cash equivalents. Entities are also required to reconcile such total to amounts on the balance sheet and disclose the nature of the restrictions. The adoption of ASU 2016-18 had no impact on the Company's financial consolidated position.

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Note 3 — Recently Adopted Accounting Pronouncements (cont.)

Recently Issued Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02*, Leases (Topic 842)* ("ASU 2016-02"), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e., lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less may be accounted for similar to existing guidance for operating leases today. For public entities, ASU 2016-02 is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those fiscal years, and early adoption is permitted. ASU 2016-02 initially required adoption using a modified retrospective approach, under which all years presented in the financial statements would be prepared under the revised guidance. In July 2018, the FASB issued *ASU No. 2018-11, Leases (Topic 842)*, which added an optional transition method under which financial statements may be prepared under the revised guidance for the year of adoption, but not for prior years. Under the latter method, entities will recognize a cumulative catch-up adjustment to the opening balance of retained earnings in the period of adoption. The adoption of ASU 2016-02 will not have an impact on the Company's consolidated financial statements since the leases are short term.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"), which removes, adds and modifies certain disclosure requirements for fair value measurements in Topic 820. The Company will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy as well as the valuation processes of Level 3 fair value measurements. However, the Company will be required to additionally disclose the changes in unrealized gains and losses included in other comprehensive income for recurring Level 3 fair value measurements and the range and weighted average of assumptions used to develop significant unobservable inputs for Level 3 fair value measurements. ASU 2018-13 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments relating to additional disclosure requirements will be applied prospectively for only the most recent interim or annual period presented in the initial year of adoption. All other amendments will be applied retrospectively to all periods presented upon their effective date. The adoption of ASU 2018-13 had no impact on the Company's consolidated financial position.

In November 2018, the FASB issued ASU No. 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606* ("ASU2018-18"), which clarifies that certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606 when the collaborative arrangement participant is a customer in the context of a unit of account. In those situations, all the guidance in Topic 606 should be applied, including recognition, measurement, presentation, and disclosure requirements. The standard adds unit-of-account guidance in Topic 808 to align with the guidance in Topic 606 (that is, a distinct good or service) when an entity is assessing whether the collaborative arrangement or a part of the arrangement is within the scope of Topic 606, and requires that in a transaction with a collaborative arrangement participant that is not directly related to sales to third parties, presenting the transaction together with revenue recognized under Topic 606 is precluded if the collaborative arrangement participant is not a customer. The standard is effective for interim and annual periods beginning after December 15, 2019, with early adoption permitted, including adoption in any interim period for public business entities for periods in which financial statements have not been issued. Amendments in the standard should be applied retrospectively to the date of initial application of Topic 606, but entities may elect to apply the amendments in this Update retrospectively either to all contracts or only to contracts that are not completed at the date of initial application of Topic 606, and should disclose the election. An entity may also elect to apply the practical expedient for contract modifications that is permitted for entities using the modified retrospective transition method in Topic 606. The Company is in the process of evaluating the impact of ASU 2018-18 on its consolidated financial statements and disclosures.

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Note 4 — Prepaid Expenses and Other Receivables

Prepaid Expenses and Other Receivables consisted of the following:

	December 31,	
	2019	2018
Vendor Receivables	$ 176	$ —
Prepaid expenses	190	—
	$ 366	$ —

Note 5 — Inventory

As of December 31, 2019 and 2018, inventory consists of the following:

	December 31,	
	2019	2018
Work in progress	$ 2,025	$ 2,111
Inventory	456	—
	$ 2,481	$ 2,111

Note 6 — Property and Equipment, Net

Property and equipment, net consisted of the following:

	December 31,	
	2019	2018
Computer equipment	$ 29	$ —
Furniture and fixture	2	—
Machinery	10	—
Total property and equipment	41	—
Less accumulated depreciation	(3)	—
Property and Equipment, Net	$ 38	$ —

Depreciation expense for 2019 and 2018 was $3 and $0, respectively.

Note 7 — Intangible Assets, net

The breakdown of intangible assets as of December 31, 2019 and 2018 was as follows:

	Website Domain	Trademark	Total
December 31, 2018			
Cost	$ —	$ —	$ —
Accumulated amortization	—	—	—
Net	$ —	$ —	$ —
December 31, 2019			
Cost	$ 140	$ 3	$ 143
Accumulated amortization	7	—	7
Net	$ 133	$ 3	$ 136

Based on the intangible assets in service as of December 31, 2019, estimated amortization expenses are $14 for each of the next ten years.

Amortization expenses amounted to $7 and $0 for the years ended December 31, 2019 and 2018, respectively.

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Note 8 — Accrued Expenses

Accrued expenses consisted of the following:

The major components of accrued expenses are summarized as follows:

	December 31, 2019	December 31, 2018
Accrued professional fees	$ 91	$ —
Accrued consulting fees	140	—
Accrued vacation	22	—
Accrued advertising expenses	15	—
Other accrued expense	87	—
Total accrued expenses	$ 355	$ —

Note 9 — Capital Structure

Common Stock

As of December 31, 2019 and 2018, the Company's articles of incorporation, as amended and restated, authorized the Company to issue 6,500,000 shares of common stock, $0.001 par value, and one share of common stock, $0.001 par value, respectively. As of December 31, 2019 and 2018, the Company had 5,720,000 and 1 shares of common stock issued and outstanding, respectively.

In May 2019, the Company effected a 1:3,680,000 stock split to the outstanding common stock of the Company. All references made to share or per share amounts in the accompanying consolidated financial statements and applicable disclosures have been retroactively adjusted to reflect the stock split.

In June 2019, the Company issued and sold 2,040,000 shares of common stock to an investor at a purchase price of $1.96 per share for gross proceeds of $4,000.

Stock Subscriptions Receivable

At December 31, 2019, the Company recorded a stock subscription receivable in the amount of $40. The stock subscription receivable is in connection with the issuance of common stock in June 2019 and represents 20,408 shares of common stock. The outstanding balance of stock subscription was paid during January 2020.

2019 Stock Option Plan

On June 4, 2019, the Company adopted its 2019 Stock Option Plan allowing the issuance of 2,758,260 shares. During December 2019 the Company granted 779,990 options to various employees and consultants. As of December 31, 2019, there were 1,978,270 shares available to be granted under the 2019 Stock Option Plan.

The Company follows the provisions of ASC Topic 718, "Compensation — Stock Compensation." ASC Topic 718 establishes standards surrounding the accounting for transactions in which an entity exchanges its equity instruments for goods or services. ASC Topic 718 focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions, such as options issued under the Company's Stock Option Plans. The Company's stock option compensation expense was $109 and $0 for the years ended December 31, 2019 and 2018, respectively, and there was $887 of total unrecognized compensation cost related to unvested options granted under the Company's options plans as of December 31, 2019. This stock option expense will be recognized through December 2029.

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Note 9 — Capital Structure (cont.)

The fair value of each option is estimated on the date of grant using the Black-Scholes option-pricing model. This model incorporates certain assumptions for inputs including a risk-free market interest rate, expected dividend yield of the underlying common stock, expected option life and expected volatility in the market value of the underlying common stock.

The following table summarizes the Company's assumptions used in the valuation of options for the year ended December 31, 2019:

Volatility	60%
Risk-free interest rate	1.67% – 1.84%
Dividend yield	00 0%
0% Expected life (years)	5 – 10
Forfeiture rate	0%

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's stock options and warrants have characteristics different from those of its traded stock, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of such stock options. The risk-free interest rate is based upon quoted market yields for United States Treasury debt securities with a term similar to the expected term. The expected dividend yield is based upon the Company's history of having never issued a dividend and management's current expectation of future action surrounding dividends. The Company calculates the expected volatility of the stock price based on the corresponding volatility of the Company's peer group stock price for a period consistent with the underlying instrument's expected term. The expected lives for such grants were based on the simplified method for employees and directors.

In arriving at stock-based compensation expense, the Company estimates the number of stock-based awards that will be forfeited due to employee turnover. The Company's forfeiture assumption is based primarily on its turn-over historical experience. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment will be made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in the Company's financial statements. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment will be made to lower the estimated forfeiture rate, which will result in an increase to expense recognized in the Company's financial statements. The expense the Company recognizes in future periods will be affected by changes in the estimated forfeiture rate and may differ significantly from amounts recognized in the current period.

The following table presents option activity under the Company's stock option plans as of December 31, 2019 and changes during years than ended:

	Number of options	Weighted average exercise price	Aggregate Intrinsic value
Options outstanding at June 4, 2019	—	$ —	$ —
Granted	779,990	$ 2.00	
Exercised	—	$ —	—
Cancelled or expired	—	$ —	—
Options outstanding at December 31, 2019	779,990	$ 2.00	$ —
Options vested and exercisable as of December 31, 2019	84,984	$ 2.00	—
Weighted average fair value of options granted in 2019		1.28	—

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Note 9 — Capital Structure (cont.)

There was no aggregate intrinsic value at December 31, 2019 as the Company's stock price of $1.96 on December 31, 2019, was below the exercise price of the outstanding stock options.

The following table summarizes information about options vested and exercisable at December 31, 2019:

	Options vested and exercisable		
Range price ($)	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price
$ 1.96	69,525	9.9	$ 1.96
$ 2.16	15,458	4.9	$ 2.16

The following table summarizes information about options expected to vest after December 31, 2019:

	Options expected to vest		
Range price ($)	Number of Options	Weighted average remaining contractual life (years)	Weighted average exercise price
$ 1.96	562,064	9.9	$ 1.96
$ 2.16	132,943	4.9	$ 2.16

Note 10 — Employee Benefit Plan

The Company maintains an employee's savings and retirement plan under Section 401(k) of the Internal Revenue Code. All full-time U.S. employees become eligible to participate in the plan. The Company's contribution to the plan is discretionary and during years ended December 31, 2019 and 2018 did not contributed to the plan.

Note 11 — Commitments and Contingencies

Lease Agreements

In June 2019, the Company entered an operating lease for office space in Burlington, Massachusetts, which expires in April 30, 2020. The Company has the right to extend the operating lease on a month-to-month through August 31, 2020. In addition, the company leases two corporate apartments that can be used by employees who have traveled long distances in order to attend meetings in the corporate office in Burlington, MA. The lease of corporate apartments is on a month-to-month basis.

The Company recognizes rent expense on a straight-line basis over the respective lease period. Rent expense was $53 and $10 for the years ended December 31, 2019 and 2018, respectively.

Future minimum lease commitments under operating leases as of December 31, 2019 are $30 until April 30, 2020.

Legal Proceedings

The Company is not a party to any litigation and does not have contingency reserves established for any litigation liabilities. At each reporting date, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable under the provisions of the authoritative guidance that addresses accounting for contingencies. The Company expenses as incurred the costs related to such legal proceedings.

AGRIFY CORPORATION AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 12 — Subsequent Events

Series A Convertible Preferred Stock

During January 2020, the Company issued 55,000 shares of Series A Convertible Preferred Stock, $0.001 par value per share, for total consideration of $5,500,000. Shares of Series A Convertible Preferred Stock confer the same voting rights as the common stock and have preference rights in the event of liquidation and deemed liquidation. Shares of Series A Convertible Preferred Stock are convertible into common stock, at each holders' option, or in their entirety (i) upon an Initial Public Offering of the Company, or (ii) consummation of an automatic conversion event.

The holders of the Series A Convertible Preferred Stock have the right to receive dividends prior and in preference to any payment of any dividend on the common stock, at a rate of 7% per stock per annum.

Acquisition of TriGrow Systems, Inc.

On January 22, 2020, the Company acquired TriGrow Systems, Inc. ("TriGrow"), which became a wholly-owned subsidiary of the Company. TriGrow was a distributor of the Company's automated, micro-climate, precision controlled vertical farming units solution for indoor grow. As part of the acquisition of TriGrow, the Company received TriGrow's 75% interest in TriGrow Brands, LLC, an owner of portfolio cannabis consumer brands. In consideration of TriGrow's shares, the Company issued to TriGrow's shareholders 942,028 shares of the Company's common stock, $0.001 par value per share.

Increase of Authorized Shares

On January 6, 2020, the Company's shareholders approved an increase to the number of authorized shares of capital stock that the Company shall have authority to issue to 53 million, consisting of: 50 million shares of common stock, $0.001 par value per share, and 3 million shares of preferred stock, $0.001 par value per share.

Distribution Agreement

On March 9, 2020, the Company entered into a distribution agreement with Enozo Technologies Inc. ("Enozo"), for an initial term of five years with auto renewal for successive one year periods unless earlier terminated. The agreement contains the following minimum purchases to retain distributor status as per the agreement, for the period from contract date until December 31, 2021 for $375, for the year ended December 31, 2022 for $750, for the year ended December 31, 2023 for $1,125 and may increase by 3% for the later years. A member of the board and the Company's Chief Executive Officer both had ownership interests and were board members of Enozo.

AGRIFY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)

(In thousands, except share and per share data)	Sep 30, 2020	December 31, 2019
Assets:		
Cash and cash equivalents	$ 4,958	$ 206
Accounts receivable	981	—
Prepaid inventory	3,902	2,481
Prepaid expenses and other receivables	359	366
Total current assets	10,200	3,053
Property Plant and Equipment, net	945	38
Goodwill	593	—
Intangible assets acquired through business combination, net	1,651	—
Capitalized website costs, net	101	136
Total Assets	$ 13,490	$ 3,227
Liabilities and Stockholders' Equity (Deficit)		
Current Liabilities:		
Accounts payable	$ 1,675	$ 870
Accrued expenses and other current liabilities	1,266	355
Current portion of long-term debt	435	—
Notes payable, net of debt discount of $2,434,675 and $0 as of September 30, 2020 and December 31, 2019, respectively	3,365	—
Derivative liabilities	1,163	—
Deferred revenue	302	2,807
Total current liabilities	8,206	4,032
Other non-current liabilities	499	—
Long-term debt, net of current portion	393	—
Total Liabilities	$ 9,098	$ 4,032
Commitments and contingencies (Note 16)		
Stockholders' Equity (Deficit)		
Common stock, 50,000,000 and 6,500,000 shares, $0.001 par value authorized as of September 30, 2020 and December 31, 2019, respectively; 6,662,028 and 5,720,000 shares issued at September 30, 2020 and December 31, 2019, respectively	7	6
Preferred 2,895,000 and 0 shares, $0.001 par value authorized as of September 30, 2020 and December 31, 2019, respectively; 0 shares issued as of September 30, 2020 and December 31, 2019, respectively;	—	—
Preferred A stock 105,000 and 0 shares, $0.001 par value authorized as of September 30, 2020 and December 31, 2019, respectively; 100,000 and 0 shares issued at September 30, 2020 and December 31, 2019, respectively	—	—
Additional paid in capital	17,642	4,122
Subscription receivable	—	(40)
Accumulated deficit	(13,455)	(4,893)
Total Stockholders' Equity (Deficit)	4,194	(805)
Non-controlling Interests	198	—
Total Liabilities and Stockholders' Equity (Deficit)	$ 13,490	$ 3,227

The accompanying notes are an integral part of these condensed consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	Nine months ended September 30,	
(In thousands)	**2020**	**2019**
Revenue, net	$ 7,734	$ 2,425
Cost of goods sold	6,874	2,716
Gross profit (loss)	860	(291)
OPERATING EXPENSES		
Research and development	2,392	31
Selling, general and administrative expenses	6,940	876
Total operating expenses	9,332	907
Operating loss	8,472	1,198
Interest Expense, net	139	3
Net loss before non-controlling interest	8,611	1,201
Loss attributable to non-controlling interest	49	—
Net loss attributable to Agrify Corporation	$ 8,562	$ 1,201

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2019 and 2020
(UNAUDITED)

(In thousands, except share amounts)

Nine months ended September 30, 2019

	Common Stock		Preferred A Stock		Additional Paid-In Capital	Subscription Receivable	Accumulated Deficit	Total Stockholders' Equity attributable to Agrify	Non-controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
Balance, January 1, 2019	3,680,000	4	—	—	89	—	(1,851)	(1,758)	—	(1,758)
Stock subscription	2,040,000	2			2,948	1,000		3,950		3,950
Net loss	—	—	—	—	—	—	(1,201)	(1,201)	—	(1,201)
Balance, September 30, 2019	5,720,000	6	—	—	3,037	1,000	(3,052)	991	—	991

Nine months ended September 30, 2020

	Common Stock		Preferred A Stock		Additional Paid-In Capital	Subscription Receivable	Accumulated Deficit	Total Stockholders' Equity attributable to Agrify	Non-controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
Balance, January 1, 2020	5,720,000	6	—	—	4,122	(40)	(4,893)	(805)	—	(805)
Stock based compensation					803			803		803
Stock subscription						40		40		40
Issuance of Preferred A Stock			100,000	—	10,000			10,000		10,000
Investment in Agrify Valiant									40	40
Acquisition of TriGrow Systems	942,028	1			1,355			1,356	207	1,563
Warrants issued and recorded as debt discount in connection with notes payable issuances					1,362			1,362		1,362
Net loss							(8,562)	(8,562)	(49)	(8,611)
Balance September 30, 2020	6,662,028	7	100,000	—	17,642	—	(13,455)	4,194	198	4,392

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

(In thousands)	Nine months ended September 30, 2020	2019
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss attributable to Agrify Corporation	$ (8,562)	$ (1,201)
Adjustments to reconcile net loss attributable to Agrify Corporation to net cash used in operating activities:		
Depreciation and amortization	261	—
Compensation in connection with the issuance of stock options	803	—
Non-cash interest expense	95	—
Loss from disposal of fixed assets	119	—
Loss attributable to non- controlling interests	(49)	—
Changes in operating assets and liabilities:		
Accounts receivable	(622)	(275)
Prepaid inventory	(1,673)	(1,118)
Prepaid expenses and other receivables	42	(318)
Accounts payable	455	(597)
Accrued expenses	507	53
Deferred revenue	(2,099)	1,709
Net cash used in operating activities	(10,723)	(1,747)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(103)	(147)
Cash paid for business combination, net of cash acquired	(1,092)	—
Net cash used in investing activities	(1,195)	(147)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of Preferred A Stock	10,000	—
Minority interest in Valiant	40	—
Proceeds from PPP Loan	823	—
Payments of financing leases	(33)	—
Proceeds from notes payable	5,800	—
Repayment of loan	—	(133)
Proceeds from issuance of common stock	40	2,950
Net cash provided by financing activities	16,670	2,817
Net increase in cash	4,752	923
Cash – Beginning of the period	206	85
Cash – End of the period	$ 4,958	$ 1,008
Supplemental disclosure of non-cash investing and financing activities:		
Warrants issued and recorded as debt discount in connection with notes payable issuances	1,362	—
Bifurcated embedded conversion options recorded as derivative liabilities and debt discount	1,160	—

The accompanying notes are an integral part of these consolidated financial statements.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 1 — Nature of Business and Basis of Presentation

Description of Business

Agrify Corporation ("Agrify" or the "Company") is a developer of highly advanced and proprietary precision hardware and software grow solutions for the indoor agriculture marketplace. The Company was formed in the State of Nevada on June 6, 2016 as Agrinamics, Inc., and subsequently changed its name to Agrify Corporation. The Company is sometimes referred to herein by the words "we," "us", "our" and similar terminology.

The Company has two wholly owned subsidiaries, AGM Service Corp LLC and Agrify Finance LLC; it holds 50% of Teejan Podponics International LLC ("TPI") since December 2018 and it holds 60% of Agrify Valiant LLC, formed in December 2019.

On January 22, 2020, the Company acquired TriGrow Systems, Inc. ("TriGrow"), which became a wholly-owned subsidiary of the Company. TriGrow was the sole distributor of the Company's automated, micro-climate, precision controlled vertical farming units solution for indoor grow. As part of the acquisition of TriGrow, the Company received TriGrow's 75% interest in TriGrow Brands, LLC., an owner of portfolio cannabis consumer brands.

On July 21, 2020, the Company acquired all the outstanding shares of Harbor Mountain Holdings LLC. ("HMH"), located in the Atlanta, GA area, that has been producing and assembling many of the Company's products.

Coronavirus pandemic ("COVID-19")

In March 2020, the World Health Organization declared the outbreak of the COVID-19 virus a global pandemic. This outbreak is causing major disruptions to businesses and markets worldwide as the virus continues to spread. A number of countries as well as certain states and cities within the United States have enacted temporary closures of businesses, issued quarantine or shelter-in-place orders and taken other restrictive measures in response to COVID-19.

To date, although all of the Company's operations are operating, COVID-19 has caused some disruptions to the Company's business. However, the extent to which COVID-19 and the related global economic crisis, affect the Company's business, results of operations and financial condition, will depend on future developments that are highly uncertain and cannot be predicted, including the scope and duration of the pandemic and any recovery period, future actions taken by governmental authorities, central banks and other third parties (including new financial regulation and other regulatory reform) in response to the pandemic, and the effects on our produce, clients, vendors and employees. The Company continues to service its customers amid uncertainty and disruption linked to COVID-19 and is actively managing its business to respond to the impact.

Note 2 — Summary of Significant Accounting Policies

Preparation of Condensed Consolidated Financial Statements

The condensed consolidated financial statements included herein have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and on the same basis as the audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2019 filed with the U.S. Securities and Exchange Commission ("SEC"), except for the recently adopted accounting pronouncements described below. The condensed consolidated statements of operations, stockholders' equity, and cash flows for the periods ended September 30, 2020 and 2019, and the condensed consolidated balance sheet as of September 30, 2020, are not audited but reflect all adjustments that are of a normal recurring nature and that are considered necessary for a fair presentation of the results for the periods shown. The condensed consolidated balance sheet as of December 31, 2019 is derived from the audited consolidated financial statements presented in our Annual Report on Form 10-K for the year ended December 31, 2019. Certain information and disclosures normally included in annual consolidated financial statements have been omitted pursuant to the rules and regulations of the SEC. Because the condensed consolidated interim financial statements

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

do not include all of the information and disclosures required by GAAP for a complete set of financial statements, they should be read in conjunction with the audited consolidated financial statements and notes included in our Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC. The results for interim periods are not necessarily indicative of a full year's results.

Accounting for wholly-owned subsidiaries

The accompanying condensed consolidated financial statements include the accounts of Agrify Inc. and its wholly owned subsidiaries, AGM Service Corp LLC (formerly AGM Service Corp Inc), Harbor Mountain Holdings LLC., TriGrow Systems, Inc., Agriafy Finance LLC, and Agxiom LLC, in accordance with the provisions required by the Consolidation Topic 810 of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). We include the results of operations of acquired companies from the date of acquisition. All significant intercompany transactions and balances are eliminated.

Accounting for joint-venture subsidiary

For the Company's less than wholly owned subsidiaries, Agrify Valiant LLC, Agrify Brands, LLC and TPI, the Company first analyzes whether these entities are a variable interest entity (a "VIE") in accordance with ASC 810 and if so, whether the Company is the primary beneficiary requiring consolidation. A VIE is an entity that has (i) insufficient equity to permit it to finance its activities without additional subordinated financial support or (ii) equity holders that lack the characteristics of a controlling financial interest. VIEs are consolidated by the primary beneficiary, which is the entity that has both the power to direct the activities that most significantly impact the entity's economic performance and the obligation to absorb losses or the right to receive benefits from the entity that potentially could be significant to the entity. Variable interests in a VIE are contractual, ownership, or other financial interests in a VIE that change with changes in the fair value of the VIE's net assets. The Company continuously re-assesses (i) whether the joint venture is a VIE, and (ii) if the Company is the primary beneficiary of the VIE. If it is determined that the joint venture qualifies as a VIE and the Company is the primary beneficiary, it is consolidated.

Based on the Company's analysis for these entities, the Company has determined that Agrify Valiant LLC and Agrify Brands, LLC are each a VIE and that the Company is the primary beneficiary. While the Company owns 60% of Agrify Valiant LLC's equity interests and 75% of Agrify Brands, LLC's equity interests, the remaining equity interests in Agrify Valiant LLC and Agrify Brands, LLC are owned by unrelated third parties, and the agreement with these third parties provides the Company with greater voting rights. Accordingly, the Company consolidates the financial statements of Agrify Valiant LLC and Agrify Brands, LLC under the VIE rules and reflects the third parties' interests in the consolidated financial statements as a non-controlling interest. The Company records this non-controlling interest at its initial fair value, adjusting the basis prospectively for the third parties' share of the respective consolidated investments' net income or loss or equity contributions and distributions. These non-controlling interests are not redeemable by the equity holders and are presented as part of permanent equity. Income and losses are allocated to the non-controlling interest holders based on its economic ownership percentage. The investment in 50% of the shares of TPI is treated as an equity investment as the Company cannot exercise significant influence.

Going Concern

These unaudited condensed consolidated financial statements are presented on the basis that the Company will continue as a going concern. The going concern concept contemplates the realization of assets and satisfaction of liabilities in the normal course of business. No adjustment has been made to the carrying amount and classification of the Company's assets and the carrying amount of its liabilities based on the going concern uncertainty. As reflected in the accompanying unaudited condensed consolidated financial statements, the Company had a net loss attributable to Agrify Inc. common shareholders of $8,562 for the Nine months ended September 30, 2020. The net cash used in operating activities was $10,723 for the Nine months ended September 30, 2020.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

Additionally, the Company had an accumulated deficit of $13,455 at September 30, 2020. These factors raise substantial doubt about the Company's ability to continue as a going concern for a period of twelve months from the issuance date of this report. Management cannot provide assurance that the Company will ultimately achieve profitable operations or become cash flow positive, or raise additional debt and/or equity capital. The Company is seeking to raise capital through additional debt and/or equity financings to fund its operations in the future. Although the Company has historically raised capital from product sales and proceeds from sales of common and preferred shares (including proceeds from convertible debt, which converted into common stock), there is no assurance that it will be able to continue to do so. If the Company is unable to raise additional capital or secure additional lending in the near future, management expects that the Company will need to curtail its operations. These unaudited condensed consolidated financial statements do not include any adjustments related to the recoverability and classification of assets or the amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

Over the last several months the Company and its advisors have been evaluating numerous opportunities and relationships to increase shareholder value. The Company expects to realize revenue through its efforts, if successful, to sell wholesale and retail products to third parties. However, as the Company is in a start-up phase, in a new business venture, in a rapidly evolving industry, many of its costs and challenges are new and unknown. In order to fund the Company's activities, the Company will need to raise additional capital either through the issuance of equity and/or the issuance of debt.

During the first five months of 2020, the Company raised a total of $10,000 by issuing its Preferred A stock. On August 14, 2020, the Company's Board of directors' approved the issuance of (i) convertible promissory note (the "Notes") in the aggregate of $5,000 and (ii) warrants to purchase a number of shares of Common Stock equal to 10% of the principal amount of Notes purchased by the Purchasers (please refer to note 18 for further details). On September 30, 2020, the Company's Board of Directors approved the increase of the total aggregate amount of the Notes to $10,000 and on November 23, 2020 it increased to $13,500. The Company received an aggregate amount of $5,800 for the issuance of notes by September 30, 2020 and additional $6,700 by December 14, 2020.

The Company has evaluated whether there are certain conditions and events, considered in the aggregate, that raise substantial doubt and the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued.

Use of Estimates

The preparation of the Company's condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions reflected in these consolidated financial statements include, but are not limited to, the accrual of expenses. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. On an ongoing basis, management evaluates its estimates when there are changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates.

Fiscal Year

The Company, and its Subsidiaries, fiscal year ends on December 31st of each year.

Cash and Cash Equivalents

Cash and cash equivalents consist principally of cash and deposits with maturities of three months or less as of September 30, 2020 and December 31, 2019.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

Concentration of Credit Risk and Significant Customer

Financial instruments that potentially subject the Company to concentration of credit risk primarily consist of cash and accounts receivable. The Company places its cash with financial institutions in the United States. The cash balances are insured by the FDIC up to $250 per depositor with unlimited insurance for funds in noninterest-bearing transaction accounts through September 30, 2020. At times, the amounts in these accounts may exceed the federally insured limits.

The Company has certain customers whose revenue individually represented 10% or more of the Company's total revenue, or whose accounts receivable balances individually represent 10% or more of the Company's total accounts receivable.

For the Nine months ended September 30, 2020 and 2019, three customers accounted for 77.8% and two customers accounted for 98.8% (74.8% was TriGrow — then the sole distributor of Agrify) of revenue, respectively. At September 30, 2020, one customer accounted for 78.4% of accounts receivable (approximately 55% of that balance was paid subsequent to September 30,2020).

Leases

The Company adopted Accounting Standards Update ("ASU") No. 2016-02, Leases ("Topic 842") effective January 1, 2019. Prior to the acquisition of Harbor Mountain LLC., in July 2019, the Company had leases that were classified as short term leases per the standard. The acquisition of Harbor Mountain LLC., in July 2020, included several financing leases and short term leases. The Company determines if an arrangement is a lease at inception and classifies its leases at commencement. Operating leases are included in operating lease right-of-use ("ROU") assets and current and noncurrent operating lease liabilities on the Company's condensed consolidated balance sheets. Finance leases are included in property and equipment, accrued expenses and other liabilities, and other noncurrent liabilities on the Company's condensed consolidated balance sheets.

ROU assets represent the Company's right to use an underlying asset for the lease term and the corresponding lease liabilities represent its obligation to make lease payments arising from the lease. Lease ROU assets and lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. The lease ROU asset is reduced for tenant incentives.

Lease expenses for minimum lease payments for operating leases are recognized on a straight-line basis over the lease term. Amortization expense of the ROU asset for finance leases is recognized on a straight-line basis over the lease term and interest expense for finance leases is recognized based on the incremental borrowing rate.

The Company does not recognize ROU assets or lease liabilities for leases with a term of 12 months or less for any asset classes (short term leases).

Fair Value of Financial Instruments

The Company's financial instruments consist of cash, accounts receivable, accounts payable and accrued expenses. The estimated fair value of the accounts receivable and accounts payable approximates their carrying value due to the short-term nature of these instruments.

Convertible Notes

The Company evaluates its convertible instruments to determine if those contracts or embedded components of those contracts qualify as derivative financial instruments to be separately accounted for in accordance with Accounting Standards Codification Topic 815 of the FASB. The accounting treatment of derivative financial instruments requires that the Company record certain embedded conversion options ("ECOs"), certain variable-share settlement features and any related freestanding instruments at their fair values as of the inception date of the agreement and at fair value as of each subsequent balance sheet date. Any change in fair value is recorded as

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

non-operating, non-cash income or expense for each reporting period at each balance sheet date. The Company reassesses the classification of its derivative instruments at each balance sheet date. If the classification changes as a result of events during the period, the contract is reclassified as of the date of the event that caused the reclassification. Bifurcated embedded conversion options, variable-share settlement features and any related freestanding instruments are recorded as a discount to the host instrument which is amortized to interest expense over the life of the respective note using the effective interest method.

If the instrument is determined to not be a derivative liability, the Company then evaluates for the existence of a beneficial conversion feature ("BCF") by comparing the commitment date fair value to the effective conversion price of the instrument. The Company records a BCF as debt discount which is amortized to interest expense over the life of the respective note using the effective interest method. BCFs that are contingent upon the occurrence of a future event are recognized when the contingency is resolved.

Revenue Recognition

In accordance with Topic 606, we account for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which we are entitled. Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

We generate revenue from the following sources: (1) equipment sales, (2) services sales and (3) construction contracts.

We sell our offering to customers under a combination of a contract and purchase order.

Equipment revenue includes sales from proprietary products designed and engineered by the Company such as vertical farming units, integrated grow racks, and LED grow lights, and non-proprietary products designed, engineered, and manufactured by third parties such as air cleaning systems and pesticide-free surface protection. For proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of royalties based on contractual percentage of the net selling price of any proprietary product sold by our customers. For non-proprietary products, the transaction price is generally in the form of a fixed fee at contract inception and variable consideration in the form of revenue share based on a contractual percentage of gross margin of any non-proprietary product sold by our customers. We do not offer a right of return for sales of equipment.

Service revenue includes sales from cloud-based solutions that allow customers to use hosted software over the contract period without taking possession of the software and are provided on a subscription basis with technical support. The transaction price is variable consideration in the form of a monthly fee determined at contract inception based on the total number of active software users. We offer service credits in those instances where software uptime does not meet predetermined performance thresholds.

Construction contracts normally provide for payment upon completion of specified work or units of work as identified in the contract. Although there is considerable variation in the terms of these contracts, they are primarily structured as fixed-price contracts, under which the Company agrees to do the entire project for a fixed amount. The Company also enters time-and-materials contracts under which the Company is paid for labor and equipment at negotiated hourly billing rates and for other expenses, including materials, as incurred at rates agreed to in the contract. The Company uses one main sub-contractor to execute the construction contracts.

Variable consideration in the form of royalties, revenue share, monthly fees, and service credits are estimated at contract inception and updated at the end of each reporting period if additional information becomes available. Variable consideration is typically not subject to constraint. Changes to variable consideration were not material for the periods presented.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

The Company typically satisfies its performance obligations for equipment sales when equipment is made available for shipment to the customer; for services sales as services are rendered to the customer and for construction contracts both as services are rendered and when contract is completed.

We enter contracts that can include various combinations of equipment, services and construction, which are generally capable of being distinct and accounted for as separate performance obligations.

We allocate total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price we would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

In certain cases, the Company offers its customers extended payment terms for more than 12 months. The Company will consider contracts with such extended payment terms as contracts with a financing component, whether explicit or implicit. Accordingly, the Company imputes interest on such contracts at an agreed upon interest rate and will present the financing components separately as financial income. For the Nine months ended September 30, 2019 and 2020, the Company did not have any such financial income.

Other Policies and Judgments — The Company has elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfillment cost and not as a promised good or service. Accordingly, the Company will accrue all fulfillment costs related to the shipping and handling of consumer goods at the time of shipment. The Company has payment terms with its customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes we collect concurrent with revenue-producing activities are excluded from revenue.

Disaggregation of Revenue — The following table provides revenue disaggregated by timing of revenue recognition:

	Nine months ended September 30,	
	2020	2019
Transferred at a point in time	$ 4,715	$ 2,406
Transferred over time	3,019	19
	$ 7,734	$ 2,425

Contract Balances — The Company receives payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of our deferred revenue primarily results from the timing difference between our performance and the customer's payment. We fulfil our obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. We recognize deferred revenue when we have received consideration or an amount of consideration is due from the customer and we have a future obligation to transfer certain proprietary products.

In accordance with ASC 606-10-50-13, the Company is required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of the Company's contracts, these reporting requirements are not applicable. The majority of the Company's remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

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Note 2 — Summary of Significant Accounting Policies (cont.)

The Company generally provides a one-year warranty on its products for materials and workmanship but may provide multiple year warranties as negotiated, and will pass on the warranties from its vendors, if any, which generally covers this one year period. In accordance with ASC 450-20-25, the Company accrues for product warranties when the loss is probable and can be reasonably estimated. At September 30, 2020, the Company has no product warranty accrual given the Company's de minimis historical financial warranty experience.

Income Taxes

The Company accounts for income taxes pursuant to the provisions of ASC Topic 740, "Income Taxes," which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred asset will not be realized.

The Company follows the provisions of ASC 740-10-25-5, "Basic Recognition Threshold." When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits. As of September 30, 2020, and December 31, 2019, tax years 2016 through 2019 remain open for IRS audit. The Company has received no notice of audit from the IRS for any of the open tax years.

The Company recognizes the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, "Basic Recognition Threshold" provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, the Company recognizes the full amount of the tax benefit.

As of January 1, 2018, the Company has no NOLs. There was no Federal income tax expense for the nine months ended September 30, 2020 and 2019 due to the Company's net losses. The Company has not yet filed its 2018 and 2019 Federal and State tax returns.

Research and Development Costs

The Company expenses research and development costs as incurred. During the Nine months ended September 30, 2020, the Company expensed $739 related to development of hardware solution for deployment of rapid grow solution and additional costs of $107 related to research and development facility, there were no such costs in the Nine months ended September 30, 2019.

AGRIFY CORPORATION AND SUBSIDIARIES
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Note 2 — Summary of Significant Accounting Policies (cont.)

Shipping and Handling Charges

The Company incurs costs related to shipping and handling of its manufactured products. These costs are expensed as incurred as a component of cost of sales. Shipping and handling charges related to the receipt of raw materials are also incurred, which are recorded as a cost of the related inventory.

Note 3 — Recently Adopted Accounting Pronouncements

In June 2016, the FASB issued Accounting Standard Update ("ASU") No. 2016-13, Financial Instruments — Credit Losses (Topic 326) — Measurement of Credit Losses on Financial Instruments. This new standard requires entities to measure expected credit losses for certain financial assets held at the reporting date using a current expected credit loss model, which is based on historical experience, adjusted for current conditions and reasonable and supportable forecasts. The Company's financial instruments within the scope of this guidance primarily includes accounts receivable. The adoption of ASU 2016-13 had no impact on the Company's consolidated financial position.

In August 2018, the FASB issued ASU No. 2018-15, Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The new standard requires capitalized costs to be amortized on a straight-line basis generally over the term of the arrangement, and the financial statement presentation for these capitalized costs would be the same as that of the fees related to the hosting arrangements. The Company adopted this standard effective January 1, 2020, using a prospective approach. The adoption of this new standard did not have a material impact on the Company's condensed consolidated financial statements. Subsequent impact will depend on the magnitude of implementation costs to be incurred. Implementation costs capitalized subsequent to adoption will be recognized in operating expenses in the statements of operations over the noncancelable period of the hosting arrangement plus any renewal periods reasonably certain to be taken.

Note 4 — Accounts Receivables

Accounts receivable are recorded at net realizable value consisting of the carrying amount less the allowance for uncollectible accounts. The Company evaluates its accounts receivable on a continuous basis, and if necessary, establishes an allowance for doubtful accounts based on a number of factors, including current credit conditions and customer payment history. The Company does not require collateral or accrue interest on accounts receivable. Accounts receivable at September 30, 2020 and December 31, 2019 are $981 and $0, respectively. No allowance for doubtful accounts was deemed necessary as of September 30, 2020 and December 31, 2019. There was no bad debt expense for the Nine months ended September 30, 2020 and 2019, respectively.

Note 5 — Prepaid Expenses and Other Receivables

Prepaid Expenses and Other Receivables consisted of the following as of September 30, 2020 and December 31, 2019:

	September 30, 2020	December 31, 2019
Other Receivables	$ 207	$ 176
Prepaid software	57	55
Prepaid professional fees	—	100
Prepaid expenses	95	35
	$ 359	$ 366

AGRIFY CORPORATION AND SUBSIDIARIES
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Note 6 — Prepaid Inventory

As of September 30, 2020, and December 31, 2019, prepaid inventory were $3,902 and $2,481, respectively. The Company's standard payment terms with suppliers require to make payments in advance of delivery of the Company's products. The prepaid inventory are short-term, non-bearing interest that are applied to the purchase of products once it is delivered.

Note 7 — Property and Equipment, Net

Property and equipment, net consisted of the following as of September 30, 2020 and December 31, 2019:

	September 30, 2020	December 31, 2019
Computer equipment	$ 112	$ 29
Furniture and fixture	16	2
Leasehold Improvements	13	
Machinery	863	10
Vehicle	67	—
Total property and equipment	1,071	41
Less accumulated depreciation	(126)	(3)
Property and Equipment, Net	$ 945	$ 38

Depreciation expense for the Nine months ended September 30, 2020 and 2019 was $100 and $0, respectively.

Note 8 — Capitalized website costs, net

Investments in the Company's website are amortized over their estimated useful lives of 3 years. As of September 30, 2020 and December 31, 2019, amortizable website costs were $139 and $143, and accumulated amortization was $38 and $7, respectively. Amortization expense was $32 and $0 for the Nine months ended September 30, 2020 and 2019, respectively.

Note 9 — Intangible Assets and Goodwill

The breakdown of acquisition-related intangible assets as of September 30, 2020 was as follows:

	Brand Rights	Customer relationships	Total
September 30, 2020			
Cost	$ 930	$ 850	$ 1,780
Accumulated amortization	(64)	(65)	(129)
Net	$ 866	$ 785	$ 1,651

There were $0 acquisition related intangibles as of December 31, 2019. Amortization expenses amounted to $129 and $0 for the Nine months ended September 30, 2020 and 2019, respectively.

AGRIFY CORPORATION AND SUBSIDIARIES
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Note 9 — Intangible Assets and Goodwill (cont.)

Estimated future amortization expense on finite-lived acquisition-related intangible assets is as follows:

(in thousands) **Years Ending December 31,**	**Amount**
2020 (remainder of year)	$ 58
2021	187
2022	187
2023	187
2024	187
2025 and thereafter	845
Total	**$ 1,651**

There was $238 goodwill activity since the acquisition date of January 22, 2020 (see note 11) to September 30, 2020.

Note 10 — Accrued Expenses

Accrued expenses consisted of the following as of September 30, 2020 and December 31, 2019:

	September 30, 2020	**December 31, 2019**
Accrued professional fees	$ 261	$ 91
Accrued consulting fees	127	140
Compensation related fees	259	22
Accrued costs	196	—
Financing lease liabilities	118	—
Other accrued expense	305	102
Total accrued expenses	$ 1,266	$ 355

Note 11 — Business Combination

Acquisition of TriGrow

On January 22, 2020, the Company completed the acquisition of all outstanding shares of TriGrow. TriGrow is an integrator and distributor of the Company's premium indoor grow solutions for the indoor controlled agriculture marketplace. As part of the acquisition, the Company received TriGrow's 75% interest in TriGrow Brands, LLC., a licensor and marketing supporter of established portfolio of consumer brands that utilize the Company's growing technology. In consideration of TriGrow's shares, the Company issued to TriGrow's shareholders 942,028 shares of Agrify common stock. In addition, the closing conditions included the assumption of TriGrow's outstanding obligation to invest $1,140 (the "Funding Amount") in a form of a so called "profit interest" investment in CCI Finance, LLC ("CCI"). The Company satisfied this obligation and made payment of the Funding Amount on January 24, 2020 pursuant to a Profits Interest Agreement with CCI. Under the Profits Interest Agreement, in return for the Company's investment of the Funding Amount, CCI is obligated to share with the Company 28.5% of the net revenue generated from its equipment lease agreement with its customer, payable at least annually by CCI to the Company. The revenue sharing percentage is reduced from 28.5% to 20% once the Company has received payments equalling an 18% Internal Rate of Return on the Funding Amount (the "Preferred Return") prior to the fifth anniversary of the agreement. The revenue sharing terminates upon the later of five years, or the Company's attainment of the Preferred Return. To date, no revenue has been generated and shared with the Company under this agreement.

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Note 11 — Business Combination (cont.)

As part of the acquisition of TriGrow, the Company made available 192,251 shares of its common stock for issuance to certain executives of TriGrow upon TriGrow's and/or the Company's receipt of $10 million of accumulative purchase orders for TriGrow and/or the Company's equipment, products, and services, for the period from November 21, 2019 through June 30, 2020 as a result of the efforts of the TriGrow executives. Such common stock of the Company is to be distributed by the Company to certain executives of the surviving corporation responsible for achievement of such milestone, in the Company's sole discretion. The Company concluded the earn-out, if materialized, will be considered as post combination services. Additionally, the Company concluded that the value associated with the earn out to be de minimis. No earn out was earned through June 30, 2020.

The purchase price for this business combination was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values on the acquisition date, with the remaining unallocated purchase price recorded as goodwill. The fair value assigned to identifiable intangible assets acquired was determined primarily by using the income approach, which discounts expected future cash flows to present value using estimates and assumptions determined by the Company.

Transaction and related costs, consisting primarily of professional fees, directly related to the acquisition, totalled $45 for the Nine months ended September 30, 2020. All transaction and related costs were expensed as incurred and are included in selling, general and administrative expenses.

The purchase price allocation for the business combination has been prepared on a preliminary basis and changes to the allocation may occur as additional information becomes available during the respective measurement period (up to one year from the acquisition date). Fair value still under review include values assigned to identifiable intangible assets and goodwill.

The following table sets forth the components and the allocation of the purchase price for the business combination:

Components of Purchase Price:		
Obligation to invest cash in profit interest	$	1,140
Capital stock consideration		1,356
Noncontrolling Interest		207
Total purchase price	**$**	**2,703**
Allocation of Purchase Price:		
Net tangible assets, including cash acquired of $44:		568
Identifiable intangible assets:		
Brand rights		930
Customer relationships		850
Total identifiable intangible assets		1,780
Goodwill		355
Total purchase price allocation	$	2,703

Brand rights and Customer relationships were assigned estimated useful lives of ten years and nine years, respectively, the weighted average of which is approximately 9.5 years.

The amount of revenue of TriGrow included in the Company's condensed consolidated statement of operations from the acquisition date of January 22, 2020 to September 30, 2020 was $4,000.

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Note 11 — Business Combination (cont.)

Acquisition of Harbor Mountain Holdings LLC

In July 2020, the Company acquired all the outstanding shares of Harbor Mountain Holdings LLC ("HMH"), located in the Atlanta, GA area, that has been producing and assembling many of the Company's products. As part of the acquisition the Company waived net receivable owed amounting to $214 and assumed lease liabilities for existing equipment and premises. As part of the acquisition of HMH, the Company may issue Agrify stock options or shares of Common Stock (at the Company's discretion), at a value of up to $100 to an executive of HMH upon achievement of certain milestones from the acquisition date through March 31, 2021, as a result of the efforts of the HMH executive. The Company concluded the earn-out, if materialized, will be considered as post combination services. Additionally, the Company concluded that the value associated with the earn out to be de minimis. No earn out was earned through September 30, 2020.

The purchase price for this business combination was allocated by management to the tangible and intangible assets acquired and liabilities assumed based on their book value which estimated their fair values on the acquisition date, with the remaining unallocated purchase price recorded as goodwill.

Transaction and related costs, consisting primarily of professional fees, directly related to the acquisition, totalled $35 for the Nine months ended September 30, 2020. All transaction and related costs were expensed as incurred and are included in selling, general and administrative expenses.

The following table sets forth the components and the allocation of the purchase price for the business combination:

Components of Purchase Price:		
Waiver of net receivable owed to Agrify	$	214
Total purchase price	**$**	**214**

Allocation of Purchase Price:	
Net tangible assets (liabilities):	
Cash	4
Property and Equipment	831
Accounts payable	(187)
Accrued expenses	(23)
Financing lease liabilities	(649)
Net tangible (liabilities):	(24)
Goodwill	238
Total purchase price allocation	$ 214

The amount of revenue of HMH included in the Company's condensed consolidated statement of operations from the acquisition date of July 22, 2020 to September 30, 2020 was $0.

The following pro forma financial information summarizes the combined results of operations for the Company, TriGrow and HMH, as though the acquisition of TriGrow and HMH occurred on January 1, 2019.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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Note 11 — Business Combination (cont.)

The unaudited pro forma financial information was as follows:

	Nine months ended September 30,	
(In thousands)	**2020**	**2019**
Revenue, net	$ 7,766	$ 2,266
Net loss before non-controlling interest	$ 9,785	$ 5,425
Loss attributable to non-controlling interest	$ 65	$ 63
Net loss	$ 9,720	$ 5,362

The pro forma financial information for all periods presented above has been calculated after adjusting the results of TriGrow and HMH to reflect the business combination accounting effects resulting from these acquisitions, including acquisition costs and the amortization expense from acquired intangible assets as though the acquisition occurred on January 1, 2019. The historical consolidated financial statements have been adjusted in the pro forma combined financial statements to give effect to pro forma events that are directly attributable to the business combination.

The pro forma financial information is for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place on January 1, 2019.

Equity Method Investments

An assessment of whether or not the Company (as a holder of 50% of TPI) has the power to direct activities that most significantly impact TPI's economic performance and to identify the party that obtains the majority of the benefits of the investment was performed as of September 30, 2020 and December 31, 2019, and will be performed as of each subsequent reporting date. After each of these assessments, we concluded that the activities that most significantly impact TPI's economic performance are the growth, marketing, sale, and distribution of products using Podponics' technology and IP, each of which are directed by TPI. Based on the outcome of these assessments, we concluded that our investment in TPI should be accounted for under the equity method.

The carrying value of the Company's investment in TPI was $0 as of September 30, 2020 and December 31, 2019. The Company did not recognize revenue from TPI for the Nine months ended September 30, 2020 and 2019.

Note 12 — Debt

Paycheck Protection Program Loan under the Coronavirus Aid, Relief, and Economic Security Act

On May 7, 2020, the Company entered into a Loan Agreement and Promissory Note (collectively the "PPP Loan") with Bank of America pursuant to the Paycheck Protection Program (the "PPP") under the recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") administered by the U.S. Small Business Administration. The Company received total proceeds of $779 from the unsecured PPP Loan. The PPP Loan is scheduled to mature on May 7, 2022 and has an interest rate of 1.00% per annum and is subject to the terms and conditions applicable to loans administered by the U.S. Small Business Administration under the CARES Act. The PPP Loan may be prepaid by the Company at any time prior to its maturity with no prepayment penalties.

The PPP Loan contains customary events of default relating to, among other things, payment defaults and breaches of representations and warranties. Subject to certain conditions, the PPP Loan may be forgiven in whole or in part by applying for forgiveness pursuant to the CARES Act and the PPP. The amount of loan proceeds eligible for forgiveness is based on a formula based on a number of factors, including the amount of loan proceeds used by the Company for certain eligible expenses, including payroll costs, rent payments on certain leases and certain qualified utility payments, provided that, among other things, at least 60% of the loan amount is used for eligible payroll costs,

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Note 12 — Debt (cont.)

the employer maintaining or rehiring employees and maintaining salaries at certain level. In accordance with the requirements of the CARES Act and the PPP, the Company intends to use the proceeds from the PPP Loan primarily for payroll costs. There can be no assurance that the Company will be granted forgiveness of the PPP Loan in whole or in part. Assuming the principal amount is not forgiven, the payment schedule would consist of 18 monthly consecutive payments of $44 each, beginning December 7, 2020 with a final payment due on May 7, 2022 for all principal and accrued interest not yet paid.

On July 27, 2020, Agrify Brands received a PPP Loan from Bank of America for a total proceeds of $44. The PPP Loan is scheduled to mature on July 27, 2022, has an interest rate of 1.00% per annum and is subject to the terms and conditions mentioned above.

Note 13 — Convertible Promissory Notes

On August 14, 2020, the Company's Board of Directors approved the issuance of (i) convertible promissory note (the "Notes") in the aggregate of $5,000 with an initial maturity date of one year following issuance (which may be extended by the Company in its sole discretion for an additional one year, referred herein as the "Maturity Date Extension"), convertible at the option of the Company or the holder of the Notes upon an IPO or public listing into shares of the Company's common stock (the "Common Stock"), and (ii) warrants (the "Warrants") to purchase a number of shares of Common Stock equal to 10% of the principal amount of Notes purchased by the Purchasers at an exercise price per share equal $0.01 (and Warrants to purchase an additional number of shares of Common Stock equal to 10% of the principal amount of Notes purchased by the Purchasers at an exercise price per share equal to $0.01 in the event the maturity date of the Notes is extended by the Company).

Solely in the event the Company determines to effectuate the Maturity Date Extension, the outstanding principal balance of the Notes shall bear interest, in arrears accruing as of the issuance date of this Note, at a rate per annum equal to eight percent (8%). Interest shall be computed on the basis of a 360-day year of twelve (12) 30-day months and shall be payable on the Maturity Date, as extended.

Immediately prior to the consummation of a public transaction, in which the Borrower is becoming a reporting issuer in the United States (the "Public Transaction"), the outstanding principal amount of the Notes together with all accrued and unpaid interest hereunder shall convert, at the option of the Company or the holder of the Notes, into a number of fully paid and non-assessable shares of Common Stock equal to the quotient of (i) the outstanding principal amount of the Notes together with all accrued and unpaid interest hereunder immediately prior to such Public Transaction divided by (ii) the Conversion Price. The "Conversion Price" shall mean a price equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the price per share issued in such Public Transaction multiplied by the total number of total outstanding shares of Common Stock immediately prior to the consummation of the Public Transaction on a fully diluted as-converted basis, divided by (ii) the number of total outstanding shares of Common Stock immediately prior to the consummation of the Public Transaction on a fully diluted as-converted basis; provided, however, in the event the closing of the Public Transaction does not occur by December 31, 2020, the Conversion Price shall be adjusted to equal the product of (a) the Conversion Price then in effect immediately prior to such adjustment and (b) 85%. In the event of a conversion upon Public Transaction, all shares of Common Stock issuable upon conversion of the Notes (at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms of the Notes), all outstanding shares of Series A convertible preferred stock of the Company (at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms of Series A convertible preferred stock), and the exercise and/or conversion of any other outstanding convertible securities and options shall be deemed to be outstanding.

On September 30, 2020, the Company's Board of Directors approved the increase of the total aggregate offering amount of the Notes to $10,000 and on November 23, 2020 it increased to $13,500.

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Note 13 — Convertible Promissory Notes (cont.)

As of September 30, 2020, a total of $5,800 of Notes and Warrants to purchase 580,000 shares of Common Stock were subscribed. Through September 30, 2020, the aggregate relative fair value of the Warrants of $1,362 was recorded as debt discount at issuance and is being amortized over the term of the respective Notes.

During the nine months ended September 30, 2020, the Company determined that the Notes contained variable-share settlement features that represented derivative liabilities and contingent BCFs. The aggregate issuance date fair value of the variable-share settlement features was $1,160, which was recorded at issuance as a debt discount and is being amortized over the terms of the respective Notes. See Note 14 — Derivative Liabilities for additional details. During the nine months ended September 30, 2020, the contingently adjustable non-bifurcated, beneficial conversion features associated with the Notes were not resolved. Upon resolving such contingency the Company will estimate the intrinsic value of the beneficial conversion features based upon the difference between the fair value of the underlying common stock at the commitment date of the note transaction and the adjusted conversion price embedded in the convertible note.

Note 14 — Derivative Liabilities

During the nine months ended September 30, 2020, the Company recorded Level 3 derivative liabilities that were measured at fair value at issuance in the aggregate amount of $1,160 related to the variable-share settlement features of certain convertible notes payable. See Note 13 — Convertible Promissory Notes for additional details. On September 30, 2020, the Company recomputed the fair value of the variable-share settlement features recorded as derivative liabilities to be $1,163. The loss on the change in fair value between the issuance date and September 30, 2020 was recorded to interest expense for the nine months ended September 30, 2020.

Note 15 — Capital Structure

On January 9, 2020, the Company increased its authorized number of shares to 53,000,000, consisting of: 50,000,000 shares of common stock, par value $0.001 per share and 3,000,000 shares of preferred stock, par value $0.001 per share. At that time, it also designated 100,000 shares of the 3,000,000 authorized shares of preferred stock, par value $0.001 per share, as Series A Convertible Preferred Stock (“Series A”).

During the first quarter of 2020, the Company issued an aggregate of 60,000 shares of Series A for an aggregate purchase price of $6,000. Contemporaneously with the issuance of Series A, the Company and each respective investor entered into a Registration Rights Agreement and Subscription Agreement whereby the Company has agreed to use its commercially reasonably efforts as soon as reasonably practical to register such shares of common stock issuable upon conversion of the Series A pursuant to a registration statement and each respective investor agreed that it will lock-up any preferred stock or common stock held immediately prior to the effectiveness of the registration statement for the Company’s IPO for 180 days.

On March 19, 2020, the Company increased the number of shares designated as Series A from 100,000 shares to 105,000 shares.

Series A is senior to any shares of common stock of the Company par value $0.001 per share (the “common stock”), and each other class or series of capital stock of the Company hereafter created (together with the common stock, the “Junior Stock”) Holders of Series A stock are entitled to receive, in preference to any dividend paid or declared and set aside for any junior stock, dividend at per share price equal to the Series A original issue price at an annual rate equal to 7% compounded annually. Series A Stock holder will be entitled to cast the number of votes, rounded down to the nearest whole number, equal to the number of votes that would be attributable to the shares of common stock issuable upon conversion of such shares of Series A, assuming conversion on the date applicable to the vote. In the event of a liquidation, dissolution or winding up of the Company, each share of Series A will be entitled to a payment as set forth in the Company’s Certificate of Designation. The Series A is convertible, at any

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Note 15 — Capital Structure (cont.)

time after issuance, into common stock of the Company at the election of the holder into an amount of shares equal to (i) the product of the Series A original price plus unpaid dividends on the shares being converted, multiplied by the number of Series A shares being converted, divided by (ii) a conversion price of $7.43 per share ($70M divided by 9,420,288), subject to adjustment.

In May 2020, the Company issued 4,000 Series A Convertible Preferred Stock, $0.001 par value, for total consideration of $4,000.

Stock Subscriptions Receivable

In June 2019, the Company issued and sold 2,040,000 shares of common stock to an investor at a purchase price of $1.96 per share for gross proceeds of $4,000 of which only $3,000 were received in cash by September 30, 2019.

At December 31, 2019, the Company recorded a stock subscription receivable in the amount of $40. The Stock subscription receivable is in connection with the issuance of common stock in September 2019 and represents 20,408 shares of common stock. The outstanding balance of stock subscription was paid during January 2020.

Stock Option Plan

On June 4, 2019, the Company adopted its 2019 Stock Option Plan allowing the issuance of 2,758,260 shares. On August 10, 2020, the Company's Board of Director approved to increase the maximum number of shares of Common Stock authorized for issuance over the term of the 2019 Stock Option Plan from 2,758,260 shares to 5,307,083 shares, subject to and effective upon the effectiveness of the Amendment. On October 8, 2020, the amendment was approved by the Company's shareholders.

During December 2019, the Company granted 779,990 options to various employees and consultants.

On May 2020, the Company cancelled all the options that were granted in December 2019.

During May 2020, the Company granted to its employees, directors and officers 749,123 options to purchase shares of common stock. 600,722 of the options will expire 10 years from the date of grant and have an exercise price per share of $1.44 and 148,401 of the options will expire 5 years from the date of grant and have an exercise price per share of $1.58. 445,313 of the options were fully vested on the grant date and the remaining stock options vest in equal monthly installments monthly over 24 months thereafter. In addition, the Company granted its employees, directors and officers 1,817,700 options to purchase shares of common stock. 1,563,329 of the options will expire 10 years from the date of grant and have an exercise price per share of $1.44 and 254,371 options will expire 5 years from the date of grant and have an exercise price per share of $1.58. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter.

On July 20, 2020, the Company granted to its employees, directors and officers 333,940 options to purchase shares of common stock. The options will expire 10 years from the date of grant and have an exercise price per share of $1.44. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter.

On August 10, 2020, the Company's Board of Directors approved grants to its directors of 24,300 options to purchase shares of common stock. The options will expire 10 years from the date of grant and have an exercise price per share of $1.44. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter.

On August 10, 2020, the Company's Board of Directors approved to increase the maximum number of shares of Common Stock authorized for issuance over the term of the 2019 Stock Option Plan from 2,758,260 shares to 5,307,083 shares, subject to and effective upon the effectiveness of the Amendment. On October 8, 2020, the amendment was approved by the Company's shareholders.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 15 — Capital Structure (cont.)

Stock options that were granted during fiscal year 2020 have several vesting conditions, including an event-based vesting acceleration (defined as a change in control, including an initial public offering).

The Company's stock option compensation expense was $803 and $0 for the Nine months ended September 30, 2020 and 2019, respectively, and there was $2,036 of total unrecognized compensation cost related to unvested options granted under the Company's options plans as of September 30, 2020. This stock option expense will be recognized through September 2030.

As of September 30, 2020, there were 2,632,486 shares available to be granted under the Company's 2019 Stock Option Plan.

The following table presents option activity under the Company's stock option plans for the Nine months ended September 30, 2020 (no outstanding options for the three months ended September 30, 2019):

	Number of options	Weighted average exercise price	Aggregate Intrinsic value
Options outstanding at January 1, 2020	779,990	$ 2.00	$ —
Granted	2,925,063	$ 1.46	
Exercised	—	$ —	
Forfeited	(783,238)	$ 1.84	
Expired	(247,218)	$ 1.93	
Options outstanding at September 30, 2020	2,674,597	$ 1.46	$ —
Options vested and exercisable as of September 30, 2020	463,806	$ 1.47	
Weighted average fair value of options granted in 2020		0.92	

The following table summarizes information about options vested and exercisable at September 30, 2020:

	Options vested and exercisable		
Range price ($)	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price
$ 1.44	2,271,825	9.6	$ 1.44
$ 1.58	402,772	6.4	$ 1.58

The following table summarizes information about options expected to vest after September 30, 2020:

	Options expected to vest		
Range price ($)	Number of options	Weighted average remaining contractual life (years)	Weighted average exercise price
$ 1.44	1,906,182	9.6	$ 1.44
$ 1.58	304,609	6.4	$ 1.58

Note 16 — Employee Benefit Plan

The Company maintains an employee's savings and retirement plan under Section 401(k) of the Internal Revenue Code. All full-time U.S. employees become eligible to participate in the plan. The Company's contribution to the plan is discretionary and during the Nine months ended September 30, 2020 and 2019 did not contributed to the plan.

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 17 — Commitments and Contingencies

Leases

In September 2019, the Company entered an operating lease for office space in Burlington, Massachusetts, which expired on April 30, 2020. The Company had the right to extend the operating lease on a month-to-month through August 31, 2020. The Company elected to terminate the lease on July 14, 2020.

The Company used two apartments for the use of its personnel while attending meetings in the corporate office in Burlington, MA. One of the apartments was leased by the Chief Executive Officer and a shareholder of the Company. The Company paid the monthly liability directly to the Company that owns the apartment complex. The monthly rent for each apartment was approximately $3.5 and the annual lease that was set to expire in January 2021 was terminated and ended in August 2020.

Part of the acquisition of Harbor Mountain LLC. in July 2020, the Company obtained a couple of facilities leases with term remaining of less than 12 months (classified as rent expenses part of Selling, general and administrative expenses in the income statement) and several non-cancellable finance leases for machinery and equipment.

Additional information of our lease activity, for the nine months ended September 30, 2020 and 2019, is as follows:

	September 30, 2020	September 30, 2019
Finance lease cost:		
Amortization of right-of-use assets	$ 30	$ —
Interest on lease liabilities	9	—
Short-term lease cost	151	24
Total lease cost	$ 190	$ 24
Weighted-average remaining lease term – finance leases	4.17 years	—
Weighted-average discount rate – finance leases	8.12%	—

As of September 30, 2020, the maturities of lease liabilities under non-cancellable finance leases were as follows:

	Finance Leases
For the year ending December 31,	
2020 (remainder of year)	$ 47
2021	190
2022	181
2023	154
2022	91
Thereafter	66
Total minimum lease payments	729
Less imputed interest	(111)
Total lease liabilities	618

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 17 — Commitments and Contingencies (cont.)

Legal Proceedings

The Company is not a party to any litigation and does not have contingency reserves established for any litigation liabilities. At each reporting date, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable under the provisions of the authoritative guidance that addresses accounting for contingencies. The Company expenses as incurred the costs related to such legal proceedings.

Distribution Agreements with related parties

On June 7, 2019, the Company entered into a distribution agreement with Bluezone Products, Inc. ("Bluezone") for distribution rights to the Bluezone products with certain exclusivity rights. The agreement requires minimum purchases amounting to $480 and $600 for the first and second contract anniversary years. The agreement auto renews for successive one year periods unless earlier terminated. The Company purchased approximately $668 and $132 of Bluezone products during the first and second contract years, respectively. Bluezone is a related party to the Company.

On March 9, 2020, the Company entered into a distribution agreement with Enozo Technologies Inc. ("Enozo"), for an initial term of five years with auto renewal for successive one year periods unless earlier terminated. The agreement contains the following minimum purchases to retain exclusive distributor status for one of our products, for the period from the contract date until December 31, 2021 for $375, for the year ended December 31, 2022 for $750, and for the year ended December 31, 2023 for $1,125, which amount may increase by 3% for the later years. The Company purchased approximately $38 of that Enozo product during the nine months ended September 30, 2020. Enozo is a related party to the Company.

Committed Purchase Agreement with Related party

On July 28, 2020, the Company entered into a purchase agreement with 4D Bios ("4D") to secure purchases of horticultural equipment. The agreement requires minimum purchases of between $577 and $607 of 4D products until December 31, 2020.4D is a related party to the Company. The Company committed purchases amounting to $577 from 4D for the nine months ended September 30, 2020.

Note 18 — Related Parties

Some of the officers and directors of the Company are involved in other business activities and may, in the future, become involved in other business opportunities that become available. They may face a conflict in selecting between the Company and other business interests. The Company formulated a policy for the resolution of such conflicts.

The following table describes the net purchasing activity with entities identified as related parties to the Company:

	Nine months ended September 30,	
(In thousands)	**2020**	**2019**
Bluezone	$ 482	$ 78
4D Bios	$ 399	$ 696
Enozo	$ 123	$ —
Valiant Americas, LLC	$ 3,078	$ —

AGRIFY CORPORATION AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 18 — Related Parties (cont.)

The following table summarizes net related party payables as of September 30, 2020 and December 31, 2019:

(In thousands)	September 30, 2020	December 31, 2019
Bluezone	$ 7	$ 101
4D Bios	$ —	$ 4
Enozo	$ 33	$ —
Valiant Americas, LLC	$ 688	$ —

Issuance of Stock Options

On October 19, 2020, the Company's Board of Directors approved a grant of 2,436,838 options to purchase shares of common stock to its employees, directors and officers. The options will expire 10 years from the date of grant and have an exercise price per share of $3.07. 25% of the options vest 12 months following issuance and the balance vests in 36 equal monthly installments thereafter.

MARCUM
ACCOUNTANTS ▲ ADVISORS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders' and Board of Directors of
TriGrow Systems, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of TriGrow Systems, Inc. (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019 and 2018, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2020

Melville, NY
June 5, 2020

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	As of December 31,	
	2019	**2018**
Assets:		
Cash	$ 74	$ 714
Accounts Receivable, net of allowance of $530 and $373, respectively	536	279
Prepaid Inventory	2,864	2,812
Prepaid expenses and other receivables	39	26
Total current assets	3,513	3,831
Intangible assets, net	168	169
Property and Equipment, net	187	259
Total Assets	$ 3,868	$ 4,259
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	$ 225	$ 205
Accrued expenses	394	245
Advance from customers	2,360	3,400
Total current liabilities	2,979	3,850
Commitments and contingencies (Note 13)		
Stockholders' Equity		
Common stock: 15,328,617 and 10,555,000 shares, $0.001 par value authorized as of December 31, 2019 and 2018; 9,538,746 and 9,500,000 shares issued at December 31, 2019 and 2018, respectively	9	9
Preferred A Stock: 4,773,317 and 0; and 3,014,993 and 0; shares, $0.001 par value authorized and issued as of December 31, 2019 and 2018, respectively	3	—
Additional paid in capital	6,768	(9)
Convertible notes	—	1,300
Accumulated deficit	(5,948)	(1,054)
Total TriGrow Systems, Inc. Stockholders' Equity	832	246
Non-controlling Interests	57	163
Total Stockholders' Equity	889	409
Total Liabilities and Stockholders' Equity	$ 3,868	$ 4,259

The accompanying notes are an integral part of these consolidated financial statements.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share amounts)

	Years ended December 31,	
	2019	**2018**
Revenue, net	$ 3,009	$ 2,307
Cost of goods sold	3,232	1,678
Gross (loss) profit	(223)	629
OPERATING EXPENSES		
Research and development	52	30
Selling, general and administrative expenses	4,732	1,182
Total operating expenses	4,784	1,212
Loss from operations	(5,007)	(583)
OTHER INCOME		
Gain from sale of fixed assets	7	—
Net loss	(5,000)	(583)
Loss attributable to non-controlling interest	106	4
Net loss attributable to TriGrow Systems, Inc.	$ (4,894)	$ (579)

The accompanying notes are an integral part of these consolidated financial statements.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except share amounts)

	Common Stock		Preferred A Stock		Additional Paid-In Capital	Convertible Notes	Accumulated Deficit	Total Stockholders' Equity attributable to Trigrow Systems, Inc.	Non-controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
Balance, January 1, 2018	9,500,000	$ 9	—	$ —	$ (9)	$ —	$ (475)	$ (475)	$ —	$ (475)
Issuance of convertible notes	—	—	—	—	—	1,300	—	1,300	—	1,300
Acquisition of TriGrow Brands LLC.	—	—	—	—	—	—	—	—	167	167
Net loss	—	—	—	—	—	—	(579)	(579)	(4)	(583)
Balance, December 31, 2018	9,500,000	9	—	—	(9)	1,300	(1,054)	246	163	409
Convertible notes	—	—	942,199	1	1,299	(1,300)	—	—	—	—
Issuance of Preferred A Stock	—	—	2,072,794	2	5,404	—	—	5,406	—	5,406
Exercise of stock options	38,746	—	—	—	—	—	—	—	—	—
Stock based compensation	—	—	—	—	74	—	—	74	—	74
Net loss	—	—	—	—	—	—	(4,894)	(4,894)	(106)	(5,000)
Balance, December 31, 2019	9,538,746	$ 9	3,014,993	$ 3	$ 6,768	$ —	$ (5,948)	$ 832	$ 57	$ 889

The accompanying notes are an integral part of these consolidated financial statements.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	For the Year Ended December 31,	
	2019	**2018**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss attributable to TriGrow Systems, Inc.	$ (4,894)	$ (579)
Adjustments to reconcile net loss attributable to TriGrow Systems, Inc.to net cash used in operating activities:		
Depreciation and amortization	61	26
Bad debt expense	342	202
Stock based compensation	74	—
Gain from sale of fixed assets	(7)	—
Loss attributed to non-controlling interest	(106)	(4)
Changes in operating assets and liabilities:		
Accounts receivable	(599)	(437)
Prepaid Inventory	(52)	(1,831)
Prepaid expenses and other receivables	(13)	1
Accounts payable	21	(31)
Accrued expenses	(867)	2,176
Net cash used in operating activities	(6,040)	(477)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(6)	(275)
Purchase of intangible assets	—	(3)
Net cash used in investing activities	(6)	(278)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of Convertible Notes	—	1,300
Proceeds from issuance of Series A Preferred Stock	5,406	—
Net cash provided by financing activities	5,406	1,300
Net (decrease) increase in cash	(640)	545
Cash – Beginning of Year	714	169
Cash – End of Year	$ 74	$ 714
NON-CASH ITEMS:		
Conversion of Convertible notes to Common Stock	$ 1,300	$ —
Intangible assets resulting from TriGrow Brands, LLC Acquisition	$ —	$ 167
Sale of fixed assets for a receivable	$ 25	$ —

The accompanying notes are an integral part of these consolidated financial statements.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 1 — Nature of Business and Basis of Presentation

Nature of Business

TriGrow Systems, Inc. ("TriGrow" or the "Company") is an integrator and distributor of premium indoor grow solutions for the indoor controlled agriculture marketplace. The Company was formed in the State of Nevada on March 1, 2017.

On November 14, 2018, the Company established TriGrow Brands, LLC, ("Brands") a majority-owned subsidiary that will license and support an established portfolio of consumer brands that utilize the Company's growing technology. The Company received 75% of the total outstanding units of Brands in return for its capital contribution of $500. The rest of the units were issued to a non-controlling entity for the use of its intellectual property pursuant to a license agreement signed between Brands and the non-controlling entity. Such license agreement was deemed to have a fair market value of $167.

Note 2 — Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and include the accounts of the Company and its majority owned subsidiary, TriGrow Brands LLC. All significant intercompany accounts and transactions have been eliminated in the preparation of the consolidated financial statements. The ownership interest of non-controlling participant in subsidiary that is not wholly-owned is included as a separate component of equity. The non-controlling participant's share of the net loss is included as "Loss attributable to non-controlling interest" on the Consolidated Statements of Operations.

Non-controlling interests

In December 2007, the FASB issued ASC 810-10-65, "Non-controlling Interests in Consolidated Financial Statements, an amendment of Accounting Research Bulletin No. 51" ("SFAS No. 160"). A non-controlling (minority) interest in subsidiaries is an ownership interest in the entity that should be reported as equity in the consolidated financial statements. It also requires consolidated net income to include the amounts attributable to both the parent and non-controlling interest, with disclosure on the face of the consolidated income statement of the amounts attributed to the parent and to the non-controlling interest. In accordance with ASC 810-10-45-21, those losses attributable to the parent and the non-controlling interest in subsidiaries may exceed their interests in the subsidiary's equity. The excess and any further losses attributable to the parent and the non-controlling interest shall be attributed to those interests even if that attribution results in a deficit non-controlling interest balance.

Use of Estimates

The preparation of the Company's consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of expenses during the reporting period. Significant estimates and assumptions reflected in these consolidated financial statements include, but are not limited to, the accrual of expenses. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. On an ongoing basis, management evaluates its estimates when there are changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

Fiscal Year

The Company, and its Subsidiary's, fiscal years end on December 31st of each year.

Cash

Cash consist principally of cash and deposits with maturities of three months or less as December 31, 2019 and 2018.

Concentration of Credit Risk and Significant Customer

Financial instruments that potentially subject the Company to concentration of credit risk primarily consist of cash, and accounts receivable. The Company places its cash with financial institutions in the United States. The cash balances are insured by the FDIC up to $250 per depositor with unlimited insurance for funds in noninterest-bearing transaction accounts through December 31, 2019. At times, the amounts in these accounts may exceed the federally insured limits. Revenue is primarily from product sales and royalty revenue. The Company had certain customers whose revenue individually represented 10% or more of the Company's total revenue, or whose accounts receivable balances individually represented 10% or more of the Company's total accounts receivable, as follows:

For the years ended December 31, 2019 and 2018, two customers accounted for 80.2% and one customer accounted for 85.7% of revenue, respectively. At December 31, 2019 and 2018, one customer accounted for 91.1% and three customers accounted for 88.6% of accounts receivable, respectively.

Accounts Receivable

Accounts receivable are recorded at net realizable value consisting of the carrying amount less the allowance for uncollectible accounts. The Company evaluates its accounts receivable on a continuous basis, and if necessary, establishes an allowance for doubtful accounts based on a number of factors, including current credit conditions and customer payment history. The Company does not require collateral or accrue interest on accounts receivable. Accounts receivable at December 31, 2019 and 2018 were $1,066 and $652, respectively. Allowance for doubtful accounts at December 31, 2019 and 2018 were $530 and $373, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization expenses are recognized using the straight-line method over the estimated useful life of each asset, as follows:

	Estimated Useful Life (Years)
Computer equipment and software	2
Furniture and fixture	5

Estimated useful lives are periodically assessed to determine if changes are appropriate. Maintenance and repairs are charged to expense as incurred. When assets are retired or otherwise disposed of, the cost of these assets and related accumulated depreciation or amortization are eliminated from the consolidated balance sheet and any resulting gains or losses are included in the consolidated statement of operations in the period of disposal. Costs for property and equipment not yet placed into service are capitalized as construction-in-progress and depreciated once placed into service.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

Impairment of Long-Lived Assets

When circumstances, such as adverse market conditions, indicate that the carrying value of a long-lived asset may be impaired, the Company performs an analysis to review the recoverability of the asset's carrying value, which includes estimating the undiscounted cash flows (excluding interest charges) from the expected future operations of the asset. These estimates consider factors such as expected future operating income, operating trends and prospects, as well as the effects of demand, competition and other factors. If the analysis indicates that the carrying value is not recoverable from future cash flows, an impairment loss is recognized to the extent that the carrying value exceeds the estimated fair value. Any impairment losses are recorded as operating expenses, which reduce net income. The Company did not record any impairment losses on long lived assets during the years ended December 31, 2019 or 2018.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses. The estimated fair value of the accounts receivable and accounts payable approximates their carrying value due to the short-term nature of these instruments.

Intangible Assets

Intangible assets are related to the establishment of Brands and capital contribution made by a non-controlling entity in the form of license agreement and from investment in the Company's website domain.

As of December 31, 2019, and 2018, the value of the license agreement was $167 and the Company's domain was $3. Investments in the Company's website are amortized over their estimated useful lives of 3 years. As of December 31, 2019, and 2018, amortizable intangible assets were $3 and $3, and accumulated amortization was $2 and $1, respectively.

Intangible and other long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate the carrying amount of the asset may not be recoverable. Recoverability is determined by comparing the forecasted future net cash flows from the operations to which the assets relate, based on management's best estimates using the appropriate assumptions and projections at the time, to the carrying amount of the assets. If the carrying value is determined to be in excess of future operating cash flows, the asset is considered impaired and a loss is recognized equal to the amount by which the carrying amount exceeds the estimated fair value of the assets. There was no impairment recorded during the years ended December 31, 2019, or 2018.

Revenue Recognition

In accordance with Accounting Standards Update No. 2014-09 (Topic 606) "Revenue from Contracts with Customers", we account for a customer contract when both parties have approved the contract and are committed to perform their respective obligations, each party's rights can be identified, payment terms can be identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which we are entitled. Revenue is recognized when, or as, performance obligations are satisfied by transferring control of a promised product or service to a customer.

We generate revenue from the following sources: (1) equipment sales and (2) services sales. We sell our equipment and services to customers under a combination of a contract and purchase order.

Equipment revenue includes resell of products designed and engineered by the Company such as vertical farming units and integrated grow racks. The transaction price is generally in the form of a fixed fee at contract inception. We do not offer a right of return for sales of equipment.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

The Company typically satisfies its performance obligations for equipment sales when equipment is made available for shipment to the customer. The Company typically satisfies its performance obligations for services sales as services are rendered to the customer. We enter contracts that can include various combinations of equipment and services, which are generally capable of being distinct and accounted for as separate performance obligations.

We allocate total contract consideration to each distinct performance obligation in an arrangement on a relative standalone selling price basis. The standalone selling price reflects the price we would charge for a specific piece of equipment or service if it was sold separately in similar circumstances and to similar customers.

Other Policies and Judgments — The Company has elected to treat shipping and handling activities after the customer obtains control of the goods as a fulfillment cost and not as a promised good or service. Accordingly, the Company will accrue all fulfillment costs related to the shipping and handling of consumer goods at the time of shipment. The Company has payment terms with its customers of one year or less and has elected the practical expedient applicable to such contracts not to consider the time value of money. Sales, value add, and other taxes we collect concurrent with revenue-producing activities are excluded from revenue.

Contract Balances — The Company receives payment from customers based on specified terms that are generally less than 30 days from the satisfaction of performance obligations. There are no contract assets related to performance under the contract. The difference in the opening and closing balances of our deferred revenue primarily results from the timing difference between our performance and the customer's payment. We fulfill our obligations under a contract with a customer by transferring products and services in exchange for consideration from the customer. Accounts receivable are recorded when the customer has been billed or the right to consideration is unconditional. We recognize deferred revenue when we have received consideration or an amount of consideration is due from the customer and we have a future obligation to transfer certain proprietary products.

In accordance with ASC 606-10-50-13, the Company is required to include disclosure on its remaining performance obligations as of the end of the current reporting period. Due to the nature of the Company's contracts, these reporting requirements are not applicable. The majority of the Company's remaining contracts meet certain exemptions as defined in ASC 606-10-50-14 through 606-10-50-14A, including (i) performance obligation is part of a contract that has an original expected duration of one year or less and (ii) the right to invoice practical expedient.

The Company generally provides a one-year warranty on its products for materials and workmanship but may provide multiple year warranties as negotiated, and will pass on the warranties from its vendors, if any, which generally covers this one year period. In accordance with ASC 450-20-25, the Company accrues for product warranties when the loss is probable and can be reasonably estimated. At December 31, 2019 and 2018, the Company has no product warranty accrual given the Company's de minimis historical financial warranty experience.

Income Taxes

The Company accounts for income taxes pursuant to the provisions of ASC Topic 740, "Income Taxes," which requires, among other things, an asset and liability approach to calculating deferred income taxes. The asset and liability approach requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is provided to offset any net deferred tax assets for which management believes it is more likely than not that the net deferred asset will not be realized.

The Company follows the provisions of ASC 740-10-25-5, "Basic Recognition Threshold." When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. In accordance with the guidance of ASC 740-10-25-6, the benefit of a tax position is recognized in the consolidated financial statements in the period during which, based on all available

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 2 — Summary of Significant Accounting Policies (cont.)

evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above should be reflected as a liability for unrecognized tax benefits in the accompanying balance sheets along with any associated interest and penalties that would be payable to the taxing authorities upon examination. The Company believes its tax positions are all highly certain of being upheld upon examination. As such, the Company has not recorded a liability for unrecognized tax benefits. As of December 31, 2019, tax years 2017 through 2019 remain open for IRS audit. The Company has received no notice of audit from the IRS for any of the open tax years.

The Company recognizes the benefit of a tax position when it is effectively settled. ASC 740-10-25-10, "Basic Recognition Threshold" provides guidance on how an entity should determine whether a tax position is effectively settled for the purpose of recognizing previously unrecognized tax benefits. ASC 740-10-25-10 clarifies that a tax position can be effectively settled upon the completion of an examination by a taxing authority. For tax positions considered effectively settled, the Company recognizes the full amount of the tax benefit.

Research and Development Costs

The Company expenses research and development costs as incurred.

Shipping and Handling Charges

The Company incurs costs related to shipping and handling of its manufactured products. These costs are expensed as incurred as a component of cost of sales. Shipping and handling charges related to the receipt of raw materials are also incurred, which are recorded as a cost of the related inventory.

Note 3 — Recently Adopted Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update No. 2014-09, Revenue from Contracts with Customers ("ASU 2014-09"). The standard provides companies with a single model for use in accounting for revenue arising from contracts with customers and supersedes current revenue recognition guidance, including industry-specific revenue guidance. The core principle of the model is to recognize revenue when control of the goods or services transfers to the customer in an amount that reflects the consideration that is expected to be received for those goods or services. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers (Topic 606) — Deferral of the Effective Date, which deferred the effective date of ASU 2014-09 until annual reporting periods beginning after December 15, 2017. Early adoption was permitted. The guidance permits companies to either apply the requirements retrospectively to all prior periods presented, or apply the requirements in the year of adoption, through a cumulative adjustment.

The Company adopted ASU 2014-09 effective January 1, 2019 using the full retrospective method. The Company's assessment efforts included an evaluation of certain revenue contracts with customers. The Company's adoption of ASU 2014-09 did not an impact on the results of operations or financial position; therefore, there was no adjustment to previously reported results.

In August 2014, the Financial Accounting Standards Board ("FASB") issued ASU No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"). The amendments in this update explicitly require a company's management to assess an entity's ability to continue as a going concern and to provide related footnote disclosures in certain circumstances. For both public and nonpublic entities, the

Note 3 — Recently Adopted Accounting Pronouncements (cont.)

new standard is effective for annual periods ending after December 15, 2016 and for interim periods thereafter. The Company adopted ASU 2014-15 as of the required effective date. This guidance relates to footnote disclosure only, and its adoption had no impact on the Company's consolidated financial position, results of operations or cash flows.

In November 2015, the FASB issued ASU No. 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes* ("ASU 2015-17"). ASU 2015-17 requires deferred tax liabilities and assets to be classified as non-current on the consolidated balance sheet. The amendment may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented. The Company adopted ASU 2015-17 as of December 31, 2019 and reflected the adoption retrospectively to all periods presented, and its adoption had no impact on the Company's consolidated financial position, results of operations or cash flows.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash* ("ASU 2016-18"), which requires that the statement of cash flows explain the change during the period in the total of cash, cash equivalents and amounts generally described as restricted cash or restricted cash equivalents. Entities are also required to reconcile such total to amounts on the balance sheet and disclose the nature of the restrictions. The adoption of ASU 2016-18 had no impact on the Company's financial consolidated position.

Recently Issued Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02*, Leases (Topic 842)* ("ASU 2016-02"), which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e., lessees and lessors). The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less may be accounted for similar to existing guidance for operating leases today. For private entities, ASU 2016-02 is effective for annual reporting periods beginning after December 15, 2021, including interim periods within those fiscal years, and early adoption is permitted. ASU 2016-02 initially required adoption using a modified retrospective approach, under which all years presented in the financial statements would be prepared under the revised guidance. In July 2018, the FASB issued *ASU No. 2018-11, Leases (Topic 842)*, which added an optional transition method under which financial statements may be prepared under the revised guidance for the year of adoption, but not for prior years. Under the latter method, entities will recognize a cumulative catch-up adjustment to the opening balance of retained earnings in the period of adoption. The adoption of ASU 2016-02 will not have an impact on the Company's consolidated financial statements since the leases are short term.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"), which removes, adds and modifies certain disclosure requirements for fair value measurements in Topic 820. The Company will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy as well as the valuation processes of Level 3 fair value measurements. However, the Company will be required to additionally disclose the changes in unrealized gains and losses included in other comprehensive income for recurring Level 3 fair value measurements and the range and weighted average of assumptions used to develop significant unobservable inputs for Level 3 fair value measurements. ASU 2018-13 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments relating to additional disclosure requirements will be applied prospectively for only the most recent interim or annual period presented in the initial year of adoption. All other amendments will be applied retrospectively to all periods presented upon their effective date. The adoption of ASU 2018-13 had no impact on the Company's consolidated financial position.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 4 — Prepaid Expenses and Other Receivables

Prepaid Expenses and Other Receivables consisted of the following:

	December 31,	
	2019	2018
Prepaid insurance	$ 6	$ 23
Other receivables	33	3
	$ 39	$ 26

Note 5 — Prepaid Inventory

As of December 31, 2019 and 2018, prepaid inventory were $2,864 and $2,812, respectively. The Company's standard payment terms with suppliers require to make payments in advance of delivery of the Company's products. The prepaid inventory are short-term, non-bearing interest that are applied to the purchase of products once it is delivered by the third party supplier.

Note 6 — Property and Equipment, Net

Property and equipment, net consisted of the following:

	December 31,	
	2019	2018
Machinery	$ 251	$ 251
Furniture and fixture	11	—
Vehicles	16	39
Total property and equipment	278	290
Less accumulated depreciation	(91)	(31)
Property and Equipment, Net	$ 187	$ 259

Depreciation expense for 2019 and 2018 was $60 and $25, respectively.

Note 7 — Intangible Assets, net

The breakdown of intangible assets as of December 31, 2019 and 2018 was as follows:

	License	Domain	Total
December 31, 2018			
Cost	$ 167	$ 3	$ 170
Accumulated amortization	—	1	1
Net	$ 167	$ 2	$ 169
December 31, 2019			
Cost	$ 167	$ 3	$ 170
Accumulated amortization	—	2	2
Net	$ 167	$ 1	$ 168

Amortization expenses amounted to $1 and $1 for the years ended December 31, 2019 and 2018, respectively.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 8 — Accrued Expenses

Accrued expenses consisted of the following:

The major components of accrued expenses are summarized as follows:

	December 31,	
	2019	2018
Customer deposit	$ 50	$ 50
Deferred revenue	28	7
Sales tax	248	172
Other accrued expense	68	16
Total accrued expenses	$ 394	$ 245

Note 9 — Advance from Customers

As of December 31, 2019 and 2018, advance from customers were $2,360 and $3,400, respectively. The Company's standard payment terms require customers to make payments in advance of delivery of the Company's products. Advance from customers are short-term, non-bearing interest that are applied to the sales price of the products once it is delivered.

Note 10 — Capital Structure

Equity

On November 16, 2018, the Company increased its authorized number of shares of common stock to 10,555,000 shares and to simultaneously declared a 1,000 for 1 stock split of its common shares.

On April 30, 2019, the Company entered into several agreements to issue 3,014,993 Series A Preferred Stock $0.001 par value at a purchase price of $2.61 per share. Simultaneously, the Company increased the authorized number of shares of common stock to 15,328,617 and authorized number of Series A Preferred Stock to 4,773,617. Holders of Series A Preferred Stock are entitled to receive dividend, if declared by the Company, prior to holders of Common Stock and in the amount equal to the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the company, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Series A original issue price, plus any dividend declare but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock.

As of December 31, 2019 and 2018, the Company's certificate of incorporation, as amended and restated, authorized the Company to issue 15,328,617 and 10,555,000 share of common stock $0.001 par value and 4,773,617 and 0 of Preferred A shares, $0.001 par value, respectively. As of December 31, 2019 and 2018, the Company had 9,538,746 and 9,500,000 shares of common stock and 3,014,993 and 0 of Preferred A shares, issued and outstanding respectively.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 10 — Capital Structure (cont.)

Convertible Notes

Series 1 KISS

On May 11, 2018, the Company issued Series 1 KISS notes for $500 ("KISS 1"). The KISS 1 has maturity date of 18 months from the date of issuance and shall:

a. Be automatically converted to 500,000 Preferred Stock issued in the next equity financing; or

b. At the election of KISS 1's holder, be converted to 500,000 Common Stock or be paid $1,000 (two times the purchase price of KISS 1), upon the event of a (i) transaction to sell, transfer or dispose all or substantially all of the Company's assets, (ii) the consummation of the merger or consolidation of the Company with or into another entity, or (iii) liquidation of the Company; or

c. Unless earlier converted to equity or repaid, be converted at the election of KISS1's holder to 500,000 shares of a newly created series of the Company's Series Seed Preferred Stock, at any time on or after the maturity of KISS 1.

Series 1 KISS do not bear any interest. On April 30, 2019, the KISS 1 note was converted to 500,000 Preferred A Stock as part of the Company's Preferred A financing round.

Series 1.A KISS

During August 3, 2018 and September 14, 2018, the Company issued Series 1.A KISS notes for a total of $800 ("KISS 1.A"). The KISS 1.A has maturity date of 18 months from the date of issuance and shall:

a. Be automatically converted to Preferred Stock issued in the next equity financing; or

b. At the election of KISS 1.A's holders, be converted to Common Stock or be paid $1,600 (two times the purchase price of KISS 1.A), upon the event of a (i) transaction to sell, transfer or dispose all or substantially all of the Company's assets, (ii) the consummation of the merger or consolidation of the Company with or into another entity, or (iii) liquidation of the Company; or

c. Unless earlier converted to equity or repaid, be converted at the election of KISS1.A's holders to shares, at any time on or after the maturity of KISS 1.

The conversion rate of KISS 1.A notes shall be calculated as the lower of (A) the product of (1) ninety percent (90%) and (2) the price paid per share for Preferred Stock by the investors in the next equity financing or (B) the quotient resulting from dividing (1) the valuation cap of $20,000 by (2) the fully-diluted capitalization immediately prior to the closing of the next equity financing.

Series 1.A KISS do not bear any interest and were converted to 442,199 Preferred A Stock on April 30, 2019 as part of the Company's Preferred A financing round.

Stock Option Plan

During November 2018, TriGrow adopted its 2018 Stock Plan allowing the issuance of 1,055,000 shares.

The Company follows the provisions of ASC Topic 718, "Compensation — Stock Compensation." ASC Topic 718 establishes standards surrounding the accounting for transactions in which an entity exchanges its equity instruments for goods or services. ASC Topic 718 focuses primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions, such as options issued under the Company's Stock Option Plans. The Company's stock option compensation expense was $74 and $0 for the years ended December 31, 2019 and 2018, respectively, and there was $0 of total unrecognized compensation cost related to unvested options granted under the Company's options plans as of December 31, 2019. All outstanding stock options were cancelled on December 31, 2019.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 10 — Capital Structure (cont.)

The fair value of each option is estimated on the date of grant using the Black-Scholes option-pricing model. This model incorporates certain assumptions for inputs including a risk-free market interest rate, expected dividend yield of the underlying common stock, expected option life and expected volatility in the market value of the underlying common stock.

The following table summarizes the Company's assumptions used in the valuation of options for the year ended December 31, 2019:

Volatility	45%
Risk-free interest rate	2.66%
Dividend yield	0%
Expected life (years)	10
Forfeiture rate	0%

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options, which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including the expected stock price volatility. Because the Company's stock options and warrants have characteristics different from those of its traded stock, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of such stock options. The risk-free interest rate is based upon quoted market yields for United States Treasury debt securities with a term similar to the expected term. The expected dividend yield is based upon the Company's history of having never issued a dividend and management's current expectation of future action surrounding dividends. The Company calculates the expected volatility of the stock price based on the corresponding volatility of the Company's peer group stock price for a period consistent with the underlying instrument's expected term. The expected lives for such grants were based on the simplified method for employees and directors.

In arriving at stock-based compensation expense, the Company estimates the number of stock-based awards that will be forfeited due to employee turnover. The Company's forfeiture assumption is based primarily on its turn-over historical experience. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment will be made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in the Company's financial statements. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment will be made to lower the estimated forfeiture rate, which will result in an increase to expense recognized in the Company's financial statements. The expense the Company recognizes in future periods will be affected by changes in the estimated forfeiture rate and may differ significantly from amounts recognized in the current period.

The following table presents option activity under the Company's stock option plans as of December 31, 2019 and changes during years than ended:

	Number of options	Weighted average exercise price	Aggregate Intrinsic value
Options outstanding at January 1, 2019	—	$ —	$ —
Granted	979,279	$ 0.01	
Exercised	38,746	$ 0.01	
Cancelled or expired	940,533	$ 0.01	
Options outstanding at December 31, 2019	—	$ —	$ —
Options vested and exercisable as of December 31, 2019	—	$ —	
Weighted average fair value of options granted in 2019		0.20	

The aggregate intrinsic value at December 31, 2019 was $196 as the Company's stock price of $0.201 on grant date was higher than the exercise price of the stock options.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 11 — Income Taxes

On December 22, 2017, the Tax Cuts and Jobs Act (the "Act") was signed into law. The Act decreased the U.S. corporate federal income tax rate from a maximum of 35% to a flat 21% effective January 1, 2018. The Act also includes a number of other provisions including, among others, the elimination of net operating loss carrybacks and limitations on the use of future losses, the repeal of the Alternative Minimum Tax regime and the repeal of the domestic production activities deduction. These provisions are not expected to have a material effect on the Corporation. Given the significant complexity of the Act and anticipated additional implementation guidance from the Internal Revenue Service, further implications of the Act may be identified in future periods.

As of December 31, 2018, the Company has incurred aggregate net operating losses of approximately $2,452. There was no Federal income tax expense for the years ended December 31, 2019 and 2018 due to the Company's net losses. The Company has not yet filed its 2019 Federal and State tax returns. The net operating losses carry forward for United States income taxes, which may be available to reduce future years' taxable income. Management believes that the realization of the benefits from these losses appears not more than likely due to the Company's limited operating history and continuing losses for United States income tax purposes. Accordingly, the Company has provided a 100% valuation allowance on the deferred tax asset to reduce the asset to zero. Management will review this valuation allowance periodically and make adjustments as necessary.

The following table summarizes the significant differences between the U.S. Federal statutory tax rate and the Company's effective tax rate for financial statement purposes for the years ended December 31, 2019 and 2018:

	December 31,	
	2019	**2018**
US Federal Statutory Tax Rate	21.00%	21.00%
State taxes	0.66%	0.66%
Change in valuation allowance	(21.66)%	(21.66)%
	0.00%	0.00%

The tax effects of temporary differences that give rise to deferred tax assets and liabilities as of December 31, 2019 and 2018 are summarized as follows:

	December 31,	
	2019	**2018**
Deferred Tax Asset:		
Net operating loss carryforward	$ 1,172	$ 554
Fixed assets	(44)	(56)
Intangible assets	(3)	—
Deferred revenue	433	—
	1,558	498
Valuation allowance	(1,558)	(498)
Net deferred tax asset	$ —	$ —

The Company provided a valuation allowance equal to the deferred income tax asset for the year ended December 31, 2019 because it was not known whether future taxable income will be sufficient to utilize the loss carryforward. The increase in the allowance was $1,060 in fiscal 2019. As of December 31, 2019, the Company has not performed an IRC Section 382 study to determine the amount, if any, of its net operating losses that may be limited as a result of the ownership change percentages during 2019 and prior years. The Company does not have any uncertain tax positions or events leading to uncertainty in a tax position. The Company's 2017 through 2019 Corporate Income Tax Returns are subject to Internal Revenue Service examination.

TRIGROW SYSTEMS, INC. AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except share amounts)

Note 12 — Employee Benefit Plan

The Company maintains an employee's savings and retirement plan under Section 401(k) of the Internal Revenue Code. All full-time U.S. employees become eligible to participate in the plan. The Company's contribution to the plan is discretionary and during years ended December 31, 2019 and 2018 the Company did not contributed to the plan.

Note 13 — Commitments and Contingencies Legal Proceedings

The Company is not a party to any litigation and does not have contingency reserves established for any litigation liabilities. At each reporting date, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable under the provisions of the authoritative guidance that addresses accounting for contingencies. The Company expenses as incurred the costs related to such legal proceedings.

Note 14 — Subsequent Events

Management has evaluated subsequent events to determine if events or transactions occurring through June 5, 2020, the date which the consolidated financial statements were available to be issued, require potential adjustment to or disclosure in the consolidated financial statements. With the exception of the matters discussed below, there were no material subsequent events that required recognition or disclosure in these consolidated financial statements.

Acquisition of TriGrow Systems, Inc.

On January 22, 2020 the Company was acquired by Agrify Corporation, Inc. ("Agrify"), and became a wholly-owned subsidiary of the Agrify. The Company was a distributor of Agrify's automated, micro-climate, precision controlled vertical farming units solution for indoor grows. In consideration of the Company's shares, Agrify issued to the Company's shareholders 942,028 shares of common stocks $0.001 par value.

Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This requirement is in addition to a dealers' obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or membership.

_____ Shares

common stock

PROSPECTUS

Joint Book-Running Managers

Maxim Group LLC **Roth Capital Partners**

[ ], 2021

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the various expenses, all of which will be borne by the registrant, in connection with the sale and distribution of the securities being registered, other than the underwriting discounts and commissions. All amounts shown are estimates except for the SEC registration fee and the FINRA filing fee.

SEC registration fee	$	2,727.50
FINRA fees	$	[_____]
Printing and engraving expenses	$	*
Accounting fees and expenses	$	*
Legal fees and expenses	$	*
Miscellaneous	$	*
Total	$	*

_____

* To be provided by amendment.

Item 14. Indemnification of Directors and Officers.

We are a Nevada corporation and generally governed by the Nevada Private Corporations Code, Title 78 of the Nevada Revised Statutes, or NRS.

Section 78.138 of the NRS provides that, unless the corporation's articles of incorporation provide otherwise, a director or officer will not be individually liable unless it is proven that (i) the director's or officer's acts or omissions constituted a breach of his or her fiduciary duties, and (ii) such breach involved intentional misconduct, fraud, or a knowing violation of the law. Our articles of incorporation provide the personal liability of our directors is eliminated to the fullest extent permitted under the NRS.

Section 78.7502 of the NRS permits a company to indemnify its directors and officers against expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with a threatened, pending, or completed action, suit, or proceeding, if the officer or director (i) is not liable pursuant to NRS 78.138, or (ii) acted in good faith and in a manner the officer or director reasonably believed to be in or not opposed to the best interests of the corporation and, if a criminal action or proceeding, had no reasonable cause to believe the conduct of the officer or director was unlawful. Section 78.7502 of the NRS requires a corporation to indemnify a director or officer that has been successful on the merits or otherwise in defense of any action or suit. Section 78.7502 of the NRS precludes indemnification by the corporation if the officer or director has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court determines that in view of all the circumstances, the person is fairly and reasonably entitled to indemnity for such expenses and requires a corporation to indemnify its officers and directors if they have been successful on the merits or otherwise in defense of any claim, issue, or matter resulting from their service as a director or officer.

Section 78.751 of the NRS permits a Nevada company to indemnify its officers and directors against expenses incurred by them in defending a civil or criminal action, suit, or proceeding as they are incurred and in advance of final disposition thereof, upon determination by the stockholders, the disinterested board members, or by independent legal counsel. If so provided in the corporation's articles of incorporation, bylaws, or other agreement, Section 78.751 of the NRS requires a corporation to advance expenses as incurred upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that such officer or director is not entitled to be indemnified by the company. Section 78.751 of the NRS further permits the company to grant its directors and officers additional rights of indemnification under its articles of incorporation, bylaws, or other agreement.

Section 78.752 of the NRS provides that a Nevada company may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee, or agent of the company, or is or was serving at the request of the company as a director, officer, employee, or agent of another company, partnership, joint venture, trust, or other enterprise, for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee, or agent, or arising out of his status as such, whether or not the company has the authority to indemnify him against such liability and expenses.

Our bylaws implement the indemnification provisions permitted by Chapter 78 of the NRS by providing that we shall indemnify our directors and officers to the fullest extent permitted by the NRS against expense, liability, and loss reasonably incurred or suffered by them in connection with their service as an officer or director. Our bylaws provide shall advance costs and expenses incurred with respect to any proceeding to which a person is made a party as a result of being a director or officer in advance of final disposition of such proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it is ultimately determined that such person is not entitled to indemnification. We may purchase and maintain liability insurance, or make other arrangements for such obligations or otherwise, to the extent permitted by the NRS.

At the present time, there is no pending litigation or proceeding involving a director, officer, employee, or other agent of ours in which indemnification would be required or permitted. We are not aware of any threatened litigation or proceeding that may result in a claim for such indemnification.

Item 15. Recent Sales of Unregistered Securities.

The information below lists all of the securities sold by us during the past three years which were not registered under the Securities Act:

In June 2019, the Company issued 2,040,000 shares of its common stock to 4D NXT Capital, LLC in consideration for services rendered to the Company, which shares were subsequently distributed from 4D NXT Capital, LLC to its members or related parties of its members.

In January 2020, the Company issued an aggregate of 942,028 shares of its common stock to the TriGrow shareholders in connection with the merger with TriGrow.

In January and April 2020, the Company issued an aggregate of 100,000 shares of the Company's Series A Convertible Preferred Stock for an aggregate purchase price of $10,000,000, which shares shall convert into common stock upon the closing of this offering.

In December 2019, the Company issued stock options to its officers, directors and employees to purchase an aggregate of 779,990 shares of its common stock. In May 2020, the Company cancelled all the options that were granted in December 2019 in consideration of services provided to the Company.

In May 2020, the Company issued stock options to purchase an aggregate of 2,602,860 shares of its common stock to its officers, directors and employees in consideration for services provided, or to be provided, to the Company.

In July 2020, the Company issued stock options to purchase an aggregate of 333,940 shares of its common stock to its officers, directors and employees in consideration for services provided, or to be provided, to the Company.

In August 2020, the Company issued stock options to purchase an aggregate of 24,300 shares of its common stock to its officers, directors and employees in consideration for services provided, or to be provided, to the Company.

In October 2020, the Company issued stock options to purchase an aggregate of 2,436,838 shares of its common stock to its officers, directors and employees in consideration for services provided, or to be provided, to the Company.

Between August and December 2020, the Company issued convertible promissory notes in the aggregate principal amount of $12,500,000 and associated five year warrants to purchase an aggregate of 1,250,000 shares of common stock with an exercise price of $0.01 per share.

For each of the transactions referred to above, we relied upon an exemption from registration afforded by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder, which exempt transactions by an issuer not involving any public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) The following exhibits are filed as part of this Registration Statement:

Exhibit No.	Description
1.1	Form of Underwriting Agreement*
2.1	Agreement and Plan of Merger dated January 22, 2020 between the Company and TriGrow Systems, Inc.
3.1	Articles of Incorporation of the Registrant, as amended
3.2	Second Amended and Restated Certificate of Designations of the Series A Convertible Preferred Stock of the Registrant
3.3	Amended and Restated Bylaws of the Registrant*
4.1	Form of Common Stock Certificate*
4.2	Form of Underwriter Warrant*
4.3	Form of Warrant issued to Noteholders
5.1	Opinion of Loeb & Loeb LLP regarding legality*
10.1	Operating Agreement of Agrify-Valiant, LLC dated December 8, 2019
10.2	Distribution Agreement dated June 7, 2019 between the Company and Bluezone Products, Inc.±
10.3	Distribution Agreement dated March 9, 2020 between the Company and Enozo Technologies Inc.±
10.4	Purchase Agreement dated July 28, 2020 between the Company and 4D Bios Inc.±
10.5	Form of Employment Agreement of Raymond Chang
10.6	Form of Employment Agreement of Niv Krikov
10.7	Employment Agreement of Former Chief Technology Officer, Matthew Liotta
10.8	Separation Agreement dated August 5, 2020 between the Company and Matthew Liotta
10.9	Form of Employment Agreement of Robert Harrison
10.10	Form of Employment Agreement of Richard A. Stamm
10.11	Profits Interest Agreement dated January 21, 2020 between the Company and CCI Finance, LLC
10.12	Form of Registration Rights Agreement between the Company and the Series A Preferred stockholders
10.13	2020 Omnibus Equity Incentive Plan
10.14	Form of 2020 Note and Warrant Purchase Agreement
10.15	Form of 2020 Convertible Promissory Note
10.16	Intellectual Property Assignment and Transfer Agreement by and among the Company, Agrify Brands, LLC and The Holden Company effective as of January 1, 2020
10.17	Supply Agreement by and among the Company and Mack Molding Co. dated December 7, 2020±*
10.18	Amended and Restated Operating Agreement of Agrify Brands, LLC effective as of August 12, 2020
14.1	Code of Ethics of Agrify Corporation Applicable To Directors, Officers And Employees
21.1	Subsidiaries of the Registrant*
23.1	Consent of Marcum LLP, independent registered public accounting firm
23.2	Consent of Loeb & Loeb LLP (included in Exhibit 5.1)*
24.1	Power of Attorney (included on signature page)

* To be filed by amendment.

± Certain information has been omitted from this exhibit in reliance upon Item 601(b)(10) of Regulation S-K.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this registration statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in Burlington, Massachusetts, on December 22, 2020.

AGRIFY CORPORATION

By: /s/ Raymond Chang

Name: Raymond Chang

Title: Chief Executive Officer (principal executive officer)

POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Raymond Chang and Niv Krikov his true and lawful attorney-in-fact, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities to sign any and all amendments (including post-effective amendments) to this registration statement (and to any registration statement filed pursuant to Rule 462 under the Securities Act of 1933, as amended), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute, each acting alone, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Raymond Chang Raymond Chang	Chief Executive Officer and Director (principal executive officer)	December 22, 2020
/s/ Niv Krikov Niv Krikov	Chief Financial Officer (principal financial and accounting officer)	December 22, 2020
/s/ Thomas Massie Thomas Massie	Director	December 22, 2020
/s/ Guichao Hua Guichao Hua	Director	December 22, 2020
/s/ Krishnan Varier Krishnan Varier	Director	December 22, 2020
/s/ Timothy Oakes Timothy Oakes	Director	December 22, 2020
/s/ Timothy Mahoney Timothy Mahoney	Director	December 22, 2020

Exhibit 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** (this **"Agreement")**, dated as of January 22, 2020, is entered into by and among **Agrify Corporation**, a Nevada corporation **("Purchaser")**, Agrify Merger Sub, Inc., a Nevada corporation and a wholly-owned subsidiary of Purchaser **("Merger Sub")**, **TriGrow Systems, Inc.,** a Nevada corporation (the **"Company"**), and Christopher J. Graham, solely in his capacity as Stockholders' Representative (the **"Stockholders' Representative"**). Capitalized terms used herein but not defined have the meanings set forth in Section 1 hereof.

RECITALS

WHEREAS, Purchaser, Merger Sub and the Company desire to enter into this Agreement pursuant to which Merger Sub will merge with and into the Company so that the Company will continue as the surviving corporation of the Merger (defined below) and will become a wholly-owned subsidiary of Purchaser.

WHEREAS, the respective Boards of Directors of Purchaser, Merger Sub and the Company have adopted and approved this Agreement and the Merger and recommended to their respective stockholders that such stockholders approve the same upon the terms and subject to the conditions of this Agreement and in accordance with the Nevada Revised Statutes ("NRS") Chapters 78 and 92A.

WHEREAS, pursuant to the Merger, among other things, the issued and outstanding shares of capital stock of the Company (the "**Company Capital Stock**") shall be converted into the right to receive shares of capital stock of Purchaser. Under the terms of the Merger, Purchaser proposes to issue an aggregate of 942,028 shares of voting common stock of Purchaser, par value $0.001 per share **(**the "**Consideration Common Stock**"), to the stockholders of the Company (the "**Company Stockholders**") as consideration for their shares of the Company Capital Stock.

WHEREAS, the parties hereto intend that the Merger will be treated as a tax-free reorganization under Section 368(a)(2)(E) of the Code (or, in the alternative, such other applicable tax-free reorganization provision under Section 368 of the Code).

WHEREAS, the Company Stockholders have approved the Merger, this Agreement and the other transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the parties hereto agree as follows:

AGREEMENT

1. **Definitions.** The following terms shall have the following meanings for the purpose of this Agreement:

   a. **"Affiliate"** means, with respect to a particular Person, (i) any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, and (ii) any of such Person's spouse, siblings (by law or marriage), ancestors and decedents and (iii) any trust for the primary benefit of such Person or any of the foregoing. The term "control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities or equity interests, by contract or otherwise. Notwithstanding anything to the contrary, neither the Company nor the Purchaser (nor any of the directors, officers, employees, representatives or agents of Purchaser) shall be considered Affiliates of each other for purposes of this Agreement.

b. **"Articles"** means the Company's Articles of Incorporation, as amended and in effect as of the date hereof.

c. "**Articles of Merger**" means the articles of merger with respect to the Merger, substantially in the form attached hereto as Exhibit A, to be filed with the Nevada Secretary of State.

d. **"Basis"** means any past or present event, fact, circumstance, condition or transaction that causes, results in or forms the basis for, or could reasonably be anticipated to cause, result in or form the basis for, any specified consequence.

e. "**Bylaws**" means the Company's by-laws, as amended and in effect as of the date hereof.

f. **"Code"** means the Internal Revenue Code of 1986, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

g. **"Company Common Stock"** means shares of Common Stock of the Company, par value $0.001 per share.

h. **"Company Intellectual Property"** means any and all Intellectual Property exploited by, held for exploitation by, owned (in whole or in part) by, or licensed to, Company.

i. **"Company Option"** means any option to purchase a share of Company Capital Stock issued in accordance with the terms and conditions of the Plan and outstanding as of the date of this Agreement.

j. **"Company Series A Preferred Stock"** means shares of Series A Preferred Stock of the Company, par value $0.001 per share.

k. **"Contract"** means any agreement, contract, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.

l. **"Dissenting Shares"** shall have the meaning set forth in Section 3(e).

m. **"Dissenting Stockholders"** means holders of Dissenting Shares.

n. **"Employee Plan"** means each material "employee benefit plan" within the meaning of Section 3(3) of ERISA and all other compensation and benefit plans, agreements, programs, policies, commitments or arrangements, including multiemployer, stock purchase, stock option, restricted stock, severance, retention, employment, consulting, change-of-control, collective bargaining, bonus, incentive, deferred compensation, employee loan, and fringe benefit plans, agreements, programs, policies, commitments or arrangements, whether or not subject to ERISA (including any related funding mechanism), whether formal or informal, oral or written, in each case, that is sponsored, maintained, contributed or required to be contributed to by the Company, or under which the Company has any current or potential liability.

o. **"Encumbrances"** mean any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal or similar restriction, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

p. **"Environmental Laws"** means an applicable Law of a Governmental Body relating to (a) releases or threatened release of Hazardous Substance; (b) pollution or protection of employee health or safety, public health or the environment; or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances.

q. **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended, and any applicable rules and regulations thereunder, and any successor to such statute, rules or regulations.

r. **"ERISA Affiliate"** means any corporation, partnership, limited liability company, sole proprietorship, trade, business or other Person that, together with Company, is or, at any time, was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(a)(14) or 4001(b)(1) of ERISA.

s. **"GAAP"** means United States generally accepted accounting principals consistently applied.

t. **"Governing Documents"** means the Company's Articles and Bylaws.

u. **"Governmental Body"** shall mean any (a) nation, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal or other government, (c) governmental or quasi-governmental authority; or (d) body exercising administrative, executive, judicial or legislative authority or power.

v. **"Hazardous Substance"** means any pollutant, contaminant or toxic or hazardous material, substance or waste or petroleum or any fraction thereof that is regulated by a Governmental Body under any provision of an Environmental Law.

w. **"Inbound License"** means any Contract pursuant to which Company: (a) is authorized or otherwise permitted to access or exploit any other Person's Intellectual Property, or (b) obtains a right to access or exploit a Person's Intellectual Property in the form of services, such as software as a services contract or a cloud services contract.

x. **"Indebtedness"** means any (i) obligation for borrowed money, (ii) obligation representing the deferred purchase price of property or services (other than accounts payable arising in the ordinary course of business payable on terms customary in the trade), (iii) obligation, whether or not assumed, secured by Encumbrance or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person, (iv) obligation evidenced by notes, acceptances, bonds, or other instruments, (v) obligation to purchase securities or other property arising out of or in connection with the sale of the same or substantially similar securities or property or any other off-balance sheet obligations, (vi) capital lease obligations, (vii) contingent obligations for which the underlying transaction constitutes "Indebtedness" under this definition, (viii) the maximum available stated amount of all letters of credit or bankers' acceptances created for the account of such Person and, without duplication, all reimbursement obligations with respect to letters of credit, (ix) obligation under any sale and leaseback transaction, (x) obligation under any liquidated earn-out, or (xi) other obligation for borrowed money or other financial accommodation that in accordance with GAAP would be shown as a liability on the consolidated balance sheet of such Person.

y. "**Indemnifying Stockholders**" means Hoop Ventures LLC, Pericles Group LLC, Crown Capital Investments, LLC, CCI-TGS A, LLC, Demeter Capital Group LP, Arcadian Fund LP, Upstream Capital, and Phyto Partners LP.

z. **"Intellectual Property"** means (i) all inventions, developments, discoveries, know-how, concepts and ideas (whether or not patentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all re-issuances, continuations, continuations-in-part, divisions, revisions, extensions, reexaminations and counterparts thereof, and all industrial designs, industrial models and utility models, (ii) all trademarks, service marks, trade dress, logos, slogans, internet domain names, trade names, corporate names and all other indicia of origin, whether or not registered, together with all translations, adaptations, modifications, derivations and combinations thereof and including all goodwill associated therewith and all applications, registrations, renewals and extensions in connection therewith, (iii) all copyrightable works, including world wide web sites, all copyrights (whether or not registered) and all applications, registrations, renewals and extensions in connection therewith, together with all translations, adaptations, modifications, derivations, combinations and derivative works thereof, (iv) all trade secrets and confidential business information (including ideas, research and development, know-how, formulae, compositions, manufacturing and production processes and techniques, methods, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and marketing plans and proposals) and rights in any jurisdiction to limit the use or disclosure thereof by any Person, (v) all computer software (including source code, object code, executable code, data, databases and related documentation), together with all translations, adaptations, modifications, derivations, combinations and derivative works thereof, (vi) all rights to internet web sites and internet domain names, (vii) all material advertising and promotional materials, (viii) telephone, telecopy and email addresses and listings, (ix) all other proprietary rights in intangible forms of property, and (x) all copies and tangible embodiments of the foregoing (in whatever form or medium).

aa. **"Intellectual Property Licenses"** means, collectively, all Inbound Licenses and Outbound Licenses.

bb. **"Knowledge"** means, with respect to any Person, the actual knowledge, or the knowledge that such Person would be reasonably be expected to obtain in the course of diligently performing his or her duties for the Company or Purchaser, as applicable. In the case of the Company, this includes the Knowledge of Nicholas Cooper, John DeRoo, David Kessler, Richard Weinstein, Bill Wike, or, solely for purposes of Section 4(p), Angelius Ladd. In the case of the Purchaser, this includes the Knowledge of Raymond Chang and Matt Liotta.

cc. **"Law"** means any federal, state, local, municipal, foreign, international, multinational or other constitution, statute, law, rule, regulation, ordinance, code, principle of common law or treaty.

dd. **"Liabilities"** mean any obligation or liability (matured or unmatured, absolute, accrued, contingent or otherwise).

ee. **"Liquidity Event"** means the first, and only the first, occurrence of either of the following events of or with respect to the Purchaser and its Affiliates after the Closing: (i) a Company Sale (as defined in the Stockholders' Agreement); or (ii) the sale of shares of Company Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended.

ff. "**Material Adverse Effect**" means any event, change, development or occurrence that, individually or together with any other event, change, development or occurrence has had a material adverse effect on the business, results of operations, properties, assets, or condition (whether financial or otherwise) of the Company; provided, however, that in no event shall any of the following constitute, or be taken into account in determining whether there has been or will be, a "Material Adverse Effect": (a) any change in applicable Laws or GAAP or any interpretation thereof, (b) the announcement or pendency of this Agreement, (c) any change generally affecting the industry in which the Company or a Subsidiary operates or the general business or economic conditions to the extent that such change does not have a disproportionate impact on the Company and its Subsidiaries, taken as a whole, (d) any change resulting from the compliance by the Company of the terms of this Agreement or the taking of any action required or contemplated by this Agreement or with the prior written consent of Purchaser, or (e) any failure of the Company and its Subsidiaries, taken as a whole, to meet any projections, forecasts or budgets that were developed in good faith by the Company or its Subsidiaries.

gg. **"Merger Sub Common Stock"** means shares of Common Stock of Merger Sub, par value $0.001 per share.

hh. **"Nevada Act"** means Chapter 78 and Chapter 92A of the Nevada Revised Statutes, as in effect on the date hereof.

ii. **"Open Source License"** means a Contract that licenses Software (a) as "free software" or "open source software" (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License), (b) under a Contract that is, or is substantially similar to, a license that meets the open source definition (www.opensource.org/osd.html) or the free software definition (www.gnu.org/philosophy/free-sw.html), or (c) under a Contract that obligates the recipient or user of the Software to (i) disclose, distribute or provide the applicable Software and derivative works based thereupon, (ii) permit another Person to access, modify, make derivative works of, or reverse-engineer the applicable Software, or (iii) grant any Person any license to patent or other Intellectual Property or impose a non-assertion obligation on the recipient or users of the Software.

jj. "**Option**" means all options to purchase or otherwise acquire shares of the Company's stock, whether vested or unvested, granted pursuant to the Company's Plan, any other plan or arrangement, or pursuant to any individual stock option award or grant agreements, in each case, that are outstanding as of immediately prior to the Effective Time.

kk. **"Order"** means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

ll. **"Outbound License"** means any Contract pursuant to which (a) Company authorizes or otherwise permits any other Person to access or exploit any Company Intellectual Property, or (b) a Person obtains a right to access or exploit any Company Intellectual Property in the form of services, such as software as a services contract or a cloud services contract.

mm. **"Owned Intellectual Property"** means all Company Intellectual Property other than Intellectual Property licensed to Company pursuant to an Inbound License.

nn. **"Permits"** means all licenses, permits, registrations, accreditations, certifications and approvals applied for, pending by, issued or given to the Company by a Governmental Body.

oo. **"Permitted Encumbrances"** means (i) statutory Encumbrances for Taxes that are not yet due or are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the Company's books in accordance with GAAP, (ii) statutory Encumbrances of landlords, carriers, warehousemen, mechanics and materialmen and other like liens incurred in the ordinary course of business for sums (provided lien statements have not been filed or such liens otherwise perfected), (iii) Encumbrances incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, (iv) Encumbrances on goods in transit incurred pursuant to documentary letters of credit, in each case arising in the ordinary course of business, (v) Encumbrances relating to capitalized lease financings, purchase money financings or operating leases that have been entered into in the ordinary course of business, (vi) Encumbrances which do not materially and adversely impair the use or value of the assets, (vii) Encumbrances disclosed in the Financial Statements, (viii) Encumbrances arising from judgments against the Company (A) that do not, in the aggregate, exceed $100,000 outstanding at any one time, (B) that are being diligently contested in good faith, (C) that are not the subject of any attachment, levy or enforcement proceeding, and (D) for which adequate reserves are maintained on the Company's books in accordance with GAAP, (ix) Encumbrances on real property (including easements, covenants, rights of way and similar restrictions of record) that are matters of record or that would be revealed by a physical inspection of such property and which do not adversely affect the current occupancy or use of such real property, (x) Encumbrances arising under applicable Laws in the ordinary course of business providing for landlord liens with respect to tenant's personal property, fixtures or leasehold improvements at the subject premises; (xi) Encumbrances arising under the credit agreements, and (xii) Encumbrances described on Schedule 1.

pp. **"Person"** means any natural individual, corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust or other entity, or a Governmental Body.

qq. **"Plan"** means the TriGrow Systems, Inc. 2018 Stock Incentive Plan.

rr. **"Pre-Closing Tax Period"** shall mean any taxable period of the Company ending on or before the Closing Date.

ss. **"Proceeding"** means any litigation, action, lawsuit, investigation, or other legal proceeding, mediation or arbitration (including any appeal or application for review thereof) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

tt. **"Purchaser Licensed IP**" means all Intellectual Property owned by Purchaser, subject to one or more Inbound Licenses.

uu. **"Sales Tax Liability"** means any sales tax liability resulting from transactions between the Company and LNP, LLC (d/b/a White Cloud), Nevada Holistic Medicine, LLC (d/b/a Cameron).

vv. **"Series A Documents"** shall mean those documents executed in connection with the Series A capital raise of the Company, including, without limitation, the Series A Stock Purchase Agreement, the Voting Agreement, the Right of First Refusal and Co-Sale Agreement, the Investor Rights Agreement and the Amended and Restated Articles of Incorporation.

ww. **"Software"** means all computer programs (including any and all software implementation of algorithms, whether in source code or object code), documentation (including user manuals and training materials) relating to any of the foregoing, but excluding any of the foregoing owned by Purchaser and licensed to the Company through one or more Inbound Licenses.

xx. **"Stockholders' Agreement"** means that certain Amended and Restated Stockholders' Agreement, dated as of the date hereof, by and among Purchaser and the other parties thereto.

yy. "**Taxes**" mean any federal, state, local, foreign and other net income, gross income, gross receipts, sales, estimated, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property (including personal property), windfall profits, social security (or similar), occupation, premium, unemployment, disability, value added, healthcare, unclaimed property, escheatment, alternative or add on minimum, customs, duties, estimated and other taxes of any kind whatsoever, and any fee, custom, impost, assessment, obligation, levy, tariff, charge or duty in the nature of a tax, together with any interest, penalties, additions to tax or additional amounts with respect thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax Liability of any other Person.

zz. **"Technology"** means, collectively, all tangible items embodying any Company Intellectual Property.

aaa. "**Transaction Documents**" means, collectively, this Agreement, the Stockholders' Agreement, the Stockholders' Agreement Joinders, the Merger Agreement Joinders, the Letters of Transmittal, and each other agreement, document, instrument and/or certificate contemplated by this Agreement to be executed in connection with the Transactions.

bbb. "**Transaction Expenses**" means, without duplication, all of the fees, expenses, costs, charges, payments and other obligations (a) that are incurred or payable by or on behalf of the Company or for which the Company is otherwise liable that have not been paid in full prior to the Closing (whether incurred or to be paid prior to, at or after Closing) and (b) of any Company Stockholder that are or were paid by the Company and that are not reimbursed or advanced to the Company prior to Closing, in each case of clause (a) or (b) above in connection with the Transactions, including (i) the fees, costs and expenses of the Company's bankers, counsel, accountants, advisors, agents and representatives, and (ii) any success, change of control, special or other bonuses or similar amounts, retention, severance or other payments or other forms of compensation that are created, accelerated, accrue or become payable by the Company, in each case upon or in connection with the consummation of the Transactions, to the extent such amounts are deductible by the Company for federal income Tax purposes on or prior to the Closing Date, and any payroll Taxes incurred or to be incurred by the Company in connection therewith.

ccc. **"Transactions"** means the transactions contemplated by this Agreement and the other Transaction Documents, including the Merger.

2. **The Merger**.

a. Articles of Merger. At the Effective Time (as defined in Section 2(b) below), on the terms and subject to the conditions set forth in this Agreement, the Articles of Merger, and the applicable provisions of Nevada Act, the Merger Sub shall merge with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger and as a wholly-owned subsidiary of Purchaser (the "**Merger**"). The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "**Surviving Corporation**."

b. Effective Time. At the Closing, Purchaser, Merger Sub, and Company shall cause the Merger to be consummated by filing all necessary documentation, including by filing Articles of Merger with the Nevada Secretary of State as provided in Section 92A.200 of the Nevada Revised Statutes (the time of acceptance by the Secretary of State of the State of Nevada of such filing or such later time as may be agreed to by Purchaser and the Company in writing (and set forth in the Articles of Merger) being referred to herein as the "**Effective Time**").

c. Assets and Liabilities. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Articles of Merger, and the applicable provisions of Nevada Act. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of Merger Sub and the Company shall vest in the Surviving Corporation, and all debts, liabilities and duties of Merger Sub and the Company shall become debts, liabilities and duties of the Surviving Corporation.

d. Charter. At the Effective Time, the Articles will be amended and restated in substantially the form attached hereto as Exhibit B (the **"Restated Articles"),** and the Restated Articles shall be the Articles of Incorporation of the Surviving Corporation, until thereafter amended as provided by Nevada Act.

e. Bylaws. At the Effective Time, the Bylaws of the Purchaser shall be the Bylaws of the Surviving Corporation, until thereafter amended as provided by Nevada Act.

f. Directors. At the Effective Time, the members of the board of directors of Merger Sub immediately prior to the Effective Time shall be appointed as the members of the board of directors of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected or appointed and qualified.

g. Officers. At the Effective Time, the officers of the Company immediately prior to the Effective Time shall be appointed as the officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly appointed.

3. **Effect of the Merger on Company Capital Stock.**

a. On the terms and subject to the conditions set forth in this Agreement, and without any action on the part of any Company Stockholder:

i. At the Effective Time, each share of the Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into and represent the right to receive a number of shares of the Consideration Common Stock equal to 471,014 divided by the aggregate number of shares of Company Common Stock. For the avoidance of doubt, an aggregate of 471,014 shares of Consideration Common Stock will be issued to the holders of Company Common Stock as set forth on the Final Merger Consideration Spreadsheet (as defined below).

ii. At the Effective Time, each share of the Company Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into and represent the right to receive a number of shares of Consideration Common Stock equal to 471,014 divided by the aggregate number of shares of Company Series A Preferred Stock. For the avoidance of doubt, an aggregate of 471,014 shares of Consideration Common Stock will be issued to the holders of Company Series A Preferred Stock as set forth on the Final Merger Consideration Spreadsheet.

iii. The number of shares of Consideration Common Stock that each Company Stockholder is entitled to receive for the shares of Company Capital Stock held by such Company Stockholder shall be rounded to the nearest whole share and computed after aggregating shares issuable for all shares of Company Capital Stock held by such Company Stockholder.

iv. Except for any Dissenting Shares, each certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Company Capital Stock shall cease to represent such shares of Company Capital Stock and shall be cancelled effective as of the Effective Time.

v. Notwithstanding anything contained herein to the contrary, any Dissenting Shares shall not be converted into the right to receive the Consideration Common Stock provided for in this Section 3(a), but the holder thereof shall only be entitled to such rights as are provided by the Nevada Act. Notwithstanding the foregoing, if any Dissenting Stockholder shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under the Nevada Act, then, upon the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in the Final Merger Consideration Spreadsheet, without interest thereon, and subject to all provisions of this Agreement applicable to the Company Stockholders, upon surrender of the certificate representing such shares. To the extent that Purchaser or Merger Sub (A) makes any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (B) incurs any other costs or expenses in respect of any Dissenting Shares (excluding payments for such shares) (collectively, "**Dissenting Share Payments**"), Purchaser or Merger Sub, as applicable, shall be entitled to recover under the terms of Section 7 hereof the amount of such Dissenting Share Payments.

b. Merger Consideration Spreadsheet. Purchaser and the Company have jointly prepared a spreadsheet attached hereto as Schedule A (the "**Final Merger Consideration Spreadsheet**") setting forth the definitive allocation of the shares of Consideration Common Stock to be paid to each Company Stockholder for his, her or its shares of Company Capital Stock in the Merger, as determined in accordance with the foregoing provision of Section 3(a). Following Purchaser's receipt of a completed and signed letter of transmittal in the form of Exhibit C attached hereto (a "**Letter of Transmittal**") from a Company Stockholder, together with the stock certificates (or a duly completed and signed affidavit of lost certificate in lieu thereof) representing such Company Stockholder's shares of Company Capital Stock, the Stockholder Questionnaire in the form attached hereto as Exhibit D (the "**Stockholder Questionnaire**"), a joinder to the Stockholders' Agreement in the form attached hereto as Exhibit E (the "**Stockholders' Agreement Joinder**"), and a joinder to this Agreement in the form attached hereto as Exhibit F (the "**Merger Agreement Joinder**") Purchaser shall deliver to each Company Stockholder a stock certificate representing the shares of Consideration Common Stock to be issued to such Company Stockholder in accordance with the Final Merger Consideration Spreadsheet.

c. Capital Stock of Merger Sub. At the Effective Time, each issued and outstanding share of Merger Sub Common Stock shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

d. Treatment of Company Capital Stock Owned by the Company. At the Effective Time, all shares of Company Capital Stock that are owned by the Company as treasury stock or by Purchaser immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

e. Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and that are held by a Company Stockholder who has not voted in favor of the Merger or consented thereto in writing and who shall have properly demanded in writing the payment of the fair value (as defined in NRS 92A.320) for such shares of Common Stock under NRS 92A.300 through 92A.500 (each, a "Dissenting Share," and collectively, the "Dissenting Shares"), to the extent that such rights were not otherwise waived by such Company Stockholder, shall not be converted into or represent the right to receive the Consideration Common Stock until such time as all rights and remedies are exercised pursuant to NRS Chapter 92A and, in any event, such Dissenting Stockholder shall be entitled only to such rights as are granted by the NRS; provided, however, that if such Dissenting Stockholder shall have failed to perfect or shall have effectively withdrawn or otherwise lost such Dissenting Stockholder's rights under NRS 92A.300 through 92A.500, each such share of Company Capital Stock held by such Company Stockholder shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive, without any interest thereon, the Consideration Common Stock in accordance with this Article 3 upon the surrender of its stock certificate and execution and delivery of a Letter of Transmittal, and such share of Company Capital Stock will no longer be a Dissenting Share. The Company shall comply in all respects with the applicable provisions of NRS 92A.300 through 92A.500. The Stockholders' Representative (on behalf of the Indemnifying Stockholders) shall have the right to direct all negotiations and proceedings with respect to such demands under Nevada Act. The Company shall send out the notice required by NRS 92A.430 by overnight courier immediately after the Closing and such notice shall set the date by which the Company must receive demand for payment on the date which is exactly thirty (30) days after the date the notice is delivered.

f. Notwithstanding anything to the contrary herein, upon the occurrence of a Liquidity Event, the aggregate amount of Consideration Common Stock actually received hereunder by the Company Stockholders in the Merger pursuant to Section 3(a) and Section 3(b) shall be deemed adjusted for all purposes of this Agreement so that the Consideration Common Stock shall be held by the holders of Company Common Stock and holders of Company Series A Preferred Stock in the manner set forth on Schedule B. For the avoidance of doubt, the provisions of this Section 3(f) shall in no case be interpreted so as to increase the amount of Consideration Common Stock previously received, in the aggregate, by the Company Stockholders pursuant to this Agreement or otherwise be interpreted to increase the rights of the Company Stockholders (or diminish the rights of the Purchaser).

4. **Representations and Warranties of the Company.** The Company represents and warrants to Purchaser that, except as disclosed in the disclosure schedule delivered by the Company to Purchaser and attached hereto (collectively, the **"Company Disclosure Schedule")** (it being understood that all exceptions noted in the Company Disclosure Schedule shall be numbered to correspond to the applicable Section of this Article 4):

a. Organization. The Company is a corporation duly incorporated, validly existing and in good standing, under the Laws of the State of Nevada. The Company has qualified as a foreign business and is in good standing under the Laws of all jurisdictions where the nature of the Company's business or the location of the Company's assets requires such qualification, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect.

b. Power and Authority. The Company has all necessary corporate power and authority to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement. Neither the Company's execution and delivery of this Agreement nor the Company's consummation of the Merger will result in a breach or violation of any of the terms, conditions or provisions of the Articles, Bylaws, or any Law or Order to which the Company is a party or by which the Company is bound. The board of directors of the Company (the **"Company Board")** has unanimously (i) approved this Agreement and the Merger; and (ii) recommended that the Company Stockholders approve this Agreement and the Merger (the "**Board Approval**"). The adoption of this Agreement by the affirmative vote (or consent) of the holders of ninety-five percent (95%) of the outstanding shares of Company Capital Stock (the "**Company Stockholder Approval**") is the only action, vote, approval or proceeding on the part of the holders of any of the Company's capital stock necessary to adopt this Agreement and approve the consummation of the Transactions.

c. Enforceability. This Agreement has been duly executed and delivered by the Company and constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles. Upon execution and delivery by the Company, this Agreement will have been duly executed and delivered by the Company and will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles.

d. Consents. Except as disclosed on Schedule 4(d), no consent, authorization, Order or consent or approval of, notices to, or filing or registration with, any Person is required for the Company's execution and delivery of this Agreement or consummation of the Merger, other than (i) the filing of the Articles of Merger as provided in Section 2(a); (ii) filings with applicable state securities authorities (all of which will be timely filed by Purchaser after the Closing), (iii) the execution and delivery of written consents evidencing the Board Approval and the Company Stockholder Approval, respectively, and (iv) dissenters' and related notices and an information statement pursuant to the Nevada Act and applicable Law.

e. No Conflicts. Except as disclosed on Schedule 4(e), neither the execution, delivery or performance by the Company of this Agreement or the other Transaction Documents, nor the consummation by the Company of the Transactions, will (i) violate, conflict with or result in any breach of any provision of the Company's Governing Documents, (ii) conflict with, result in a violation or breach of, result in any loss of rights or additional obligations under, or constitute (with or without due notice or lapse of time or both) a default or give rise to any right of termination, cancellation or acceleration under, any of the terms, conditions or provisions of, or result in the payment of any additional amounts or consideration under any Material Contract or material Permit, (iii) violate any Order or applicable Law to which the Company is subject or (iv) except as contemplated by this Agreement or with respect to Permitted Encumbrances, result in the creation of any Lien upon any of the material assets of the Company, except, in the case of clauses (ii), (iii) or (iv) above, for such violations, conflicts, breaches, defaults or rights of acceleration, modification or cancellation as would not reasonably be expected to be materially adverse to the Company or materially delay its ability to consummate the Transactions.

f. Governing Documents. Complete and accurate copies of the Governing Documents, stock records and corporate minute books and records have been furnished for inspection by Purchaser. To the Company's Knowledge, the Company is not in violation of any of the provisions of its Governing Documents.

g. Capitalization.

i. The authorized capital stock of the Company consists of:

A) 15,328,617 shares of Company Common Stock, of which 9,538,746 are issued and outstanding and 4,773,617 shares of Company Series A Preferred Stock, of which 3,014,993 are issued and outstanding. The Company has no current equity incentive plan and no shares of Common Stock reserved under any such plan. All shares of capital stock of the Company that have been issued have been duly authorized, validly issued, are fully paid and non-assessable and were issued in compliance with all applicable Laws. The rights, privileges and preferences of Company Series A Preferred Stock are as stated in the Articles and as provided by Nevada Act. Schedule 4(g) sets forth the number, class and series of shares of capital stock of the Company that each Company Stockholder holds of record, and the address and state of residence of such stockholder.

B) Except as disclosed in Schedule 4(g), (i) no Company Options, subscriptions or purchase rights of any nature to acquire shares of capital stock or other securities of the Company are authorized, issued or outstanding and the Company is not obligated in any other manner to issue shares of its capital stock or other securities, except as contemplated by this Agreement, (ii) the Company is not a party to, and, to the Company's Knowledge, there are no, agreements, understandings, trusts or other collaborative arrangements or understandings concerning the voting of Company Capital Stock other than this Agreement and the Series A Documents, (iii) the Company is not a party to, and, to the Company's Knowledge, there are no, agreements, understandings, trusts or other understandings concerning transfers or registration of Company Capital Stock other than this Agreement and the Series A Documents, and (iv) there are no restrictions on the transfer of shares of Company Capital Stock other than those imposed by applicable Laws, this Agreement and the Series A Documents. The Company has delivered to Purchaser true and complete copies of each option agreement evidencing each Company Option.

ii. Except as set forth on Schedule 4(g), the Company has never adjusted or amended the exercise price of any stock options previously awarded, whether through amendment, cancellation, replacement grant, repricing, or any other means. No stock options, stock appreciation rights or other equity-based awards issued or granted by the Company are subject to the requirements of Section 409A of the Code. Except as set forth on Schedule 4(g) or in the Articles or the Series A Documents, the Company has no obligation (contingent or otherwise) to purchase or redeem any shares of Company Capital Stock.

h. Subsidiaries. Except as disclosed in Schedule 4(h), the Company does not hold or beneficially own any direct or indirect interest in any Person (whether it be common or preferred stock or any comparable ownership interest in any Person that is not a corporation), or any subscriptions, options, warrants, rights, calls, convertible securities or other agreements or commitments for any interest in any Person.

i. Financial Statements. The Company has furnished to Purchaser copies of the Company's balance sheets, statements of operations and cash flow and notes to financial statements (together with any supplementary information thereto) as of and for the years ended December 31, 2017 and December 31, 2018 (the "**Annual Financial Statements**") and the Company's balance sheet and statements of operations and cash flow as of and for the nine-month period ended September 30, 2019 (the "**Interim Financial Statements**," and together with the Annual Financial Statements, the "**Financial Statements**")**.** The Financial Statements are consistent with the books and records of the Company, fairly present in all material respects the financial condition of the Company as of the date and for the periods indicated therein, and, except as disclosed on Schedule 4(i), have been prepared in accordance with GAAP (excepting, as to the Interim Financial Statements, the lack of footnotes and such Interim Financial Statements being subject to normal year-end adjustments).

j. Undisclosed Liabilities. The Company has no Liabilities except for Liabilities (i) provided for or reserved against in the Financial Statements and the Interim Financial Statements, as applicable, (ii) incurred by the Company subsequent to the date of the Interim Financial Statements in the ordinary course of the business consistent with past practice (none of which results from or related to any breach of contract, breach of warranty, tort, infringement or violation of Law), or (iii) set forth on Schedule 4(j).

k. Title to Assets. Except as specifically disclosed in the Financial Statements, the Interim Financial Statements or on Schedule 4(k), the Company has good title to all of its tangible personal property (including machinery and equipment, inventory, receivables and furniture) shown on the Financial Statements, free and clear of any Encumbrances, except for (i) assets which have been disposed of to non-Affiliate third-parties since the date of the Interim Financial Statements in the ordinary course of business, (ii) Encumbrances reflected in the Financial Statements, and (iii) Permitted Encumbrances. Except as disclosed on Schedule 4(k), all of the Company's tangible assets are located at the Company's facilities or in transit to the Company's facilities.

l. Bank Accounts. Schedule 4(l) completely and accurately lists (i) the name of each bank, safe deposit company or other financial institution in which the Company has an account, lock box or safe deposit box or joint accounts, lock boxes or safe deposit boxes (together with the name of the joint holder thereof), (ii) the names of all Persons authorized to draw thereon or to have access thereto and the names of all Persons, if any, holding powers of attorney from the Company, and (iii) all instruments or agreements to which the Company is a party as an endorser, surety or guarantor, other than checks endorsed for collection or deposit in the ordinary course of business.

m. Absence of Certain Changes. Except as disclosed on Schedule 4(m), since the date of the Interim Financial Statements, the Company has operated its business in the ordinary course consistent with past practices, has not experienced any Material Adverse Effect, and there has not been any:

i. declaration or payment of any dividends, or authorization or any distribution upon or with respect to any class or series of Company Capital Stock;

ii. sale, exchange or other disposition of any of its assets or rights, other than the sale of its inventory in the ordinary course of business;

iii. payment of any bonuses, or material increase in salaries or other compensation, by the Company to any of its respective directors, officers, or employees, except for bonus awards and increases in salaries made in the ordinary course of business consistent with past practices;

iv. capital expenditures in excess of $50,000;

v. (A) bonus or incentive grant or any wage, salary or compensation increase or severance or termination payment to, or any promotion of, any director, officer, employee, group of employees or consultant other than in the ordinary course of business, (B) entry into any employment, severance, retention, change in control or similar Contract, (C) hire of any employee other than a new hire in the ordinary course of business and who is expected to earn less than $50,000 in annual cash compensation; (D) any termination of the employment of any employee whose annual base salary exceeded $50,000 at the time of such termination; or (E) any payments or distributions to its employees, officers or directors except such amounts as constitute currently effective compensation for services rendered, or reimbursement for reasonable ordinary and necessary out-of-pocket business expenses; or

vi. incurrence of Indebtedness or guarantee of debt or other liability of any third party by the Company other than Indebtedness in the ordinary course of business and reflected on the Financial Statements.

n. Contracts and Commitments. Other than this Agreement and those documents disclosed on Schedule 4(n), the Company is not a party to:

i. any partnership agreements or joint venture agreements;

ii. any agreements with another person materially limiting or restricting the ability of the Company to enter into or engage in any market or line of business, including any Contract restricting in any manner Company's right to compete with any other Person, to sell to or purchase from any other Person or to solicit for employment or hire any Person;

iii. any employment, severance or consulting agreements with any director, officer or key employee;

iv. any agreements related to the license of any patent, copyright, trademark, trade secret or other proprietary right to or from the Company, other than the Company's license of proprietary software to customers in the ordinary course of business;

v. any agreement containing a grant of rights to manufacture, produce, assemble, license, market, or sell its products that limit the Company's exclusive right to develop, manufacture, assemble, distribute, market or sell its products;

vi. any guaranties, performance, bid or completion bonds or surety or indemnification agreements;

vii. any lease, sub-lease or other Contract relating to any personal property or real property owned by the Company or used by the Company in operation of its business;

viii. any Contract evidencing or relating to any Indebtedness;

ix. any collective bargaining agreements;

x. any Contract for the payment of severance benefits, retention bonuses, change in control payments, sale bonuses or other similar payments to any employee or other Person;

xi. plans or Contracts with respect to Employee Benefit Plans;

xii. any Contracts for the sale of any equipment, inventory or other assets, except for sales of inventory in the ordinary course of business, or any Contract with respect to the acquisition or disposition of any assets or securities of the Company or held by the Company other than in the ordinary course of business;

xiii. any confidentiality agreements, other than those entered into with customers, prospective customers, suppliers or prospective suppliers in the ordinary course of business;

xiv. any requirements Contracts or take or pay Contracts, which involve consideration in excess of $25,000;

xv. any Contracts with, or relating to the provision of goods or services to any Governmental Body, which involves consideration in excess of $25,000;

xvi. any limited liability company agreements, partnership agreements or joint venture agreements or other contracts (however named) involving a sharing of profits, losses, costs or Liabilities by Company and another Person; or

xvii. or any other material agreement (or group of related agreements), the performance of which involves consideration in excess of $25,000 (including rendering of goods or services by or to Company) other than agreements entered into in the ordinary course of business consistent with past practice.

All Contracts required to be disclosed on Schedule 4(n) (the "**Material Contracts**") are in full force and effect and binding upon the Company, and, to the Company's Knowledge, the other parties thereto. True and correct copies of all Material Contracts have been delivered to Purchaser. No material default by the Company has occurred under any Contract and, to the Company's Knowledge, no material default by any other party has occurred under any Contract. To the Company's Knowledge, no event has occurred or fact, circumstance or condition exists that, with the lapse of time, the giving of notice or both, or the happening of any further event or existence of any future fact, circumstance or condition, would become a default by the Company under any Contract. Except as specifically disclosed in Schedule 4(n), none of the Contracts required to be disclosed on Schedule 4(n) evidences or otherwise relates to any Liability of the Company for any Indebtedness in excess of $25,000 in the aggregate.

o. Environmental Matters. To the Company's Knowledge, the Company is in material compliance with all Environmental Laws. The Company has not received any written notice, report or other information regarding any actual or alleged material violation of any Environmental Law or any material Liability, including any investigatory, remedial or corrective obligations, relating to the Company or its facilities arising under Environmental Laws.

p. Intellectual Property.

i. Set forth on Schedule 4(p)(i) is a complete and accurate listing of all (A) issued patents and pending patent applications; (B) trademark registrations and pending trademark applications; and (C) domain name registrations owned by the Company, in each case with the jurisdiction in which such item has been issued, registered or filed and the applicable issuance, grant, registration or serial number(s) in the name of the Company, as assignee (the "**Registered Intellectual Property**"). All Registered Intellectual Property has been obtained and maintained in material compliance with all applicable published rules, policies and procedures of the applicable Governmental Bodies, and is enforceable and valid.

ii. Except as disclosed on Schedule 4(p)(ii), the Company solely and exclusively owns all right, title and interest in and to the Owned Intellectual Property. All Owned Intellectual Property is free and clear of any and all Encumbrances except for Permitted Encumbrances. Company either lawfully owns, or otherwise has sufficient rights to use and exploit pursuant to a valid and enforceable agreement, all Intellectual Property (other than Purchaser Licensed IP) that is necessary for and used by Company in the operation of its business as currently conducted. With the exception of any Outbound Licenses designated as exclusive on Schedule 4(p)(ii), all Owned Intellectual Property is fully transferable, alienable and licensable by Company without restriction and without payment of any kind to any third party and without approval of any third party. No funding, facilities or personnel of any educational institution or governmental authority were used, directly or indirectly, to develop or create, in whole or in part, any Owned Intellectual Property.

iii. Schedule 4(p)(iii) sets forth a true, correct and complete list of all: (i) Outbound Licenses, and (ii) Inbound Licenses (other than any Inbound License to commercially available object code Software, Software as a service, or cloud service, in each case that does not involve aggregate annual payments in excess of $10,000 for all licenses or users of such Inbound License). With the exception of Purchaser Licensed IP, all of the Intellectual Property Licenses relating to Company Intellectual Property that is necessary for and used by Company in the operation of its business as currently conducted are in full force and effect and enforceable in accordance with their terms, except to the extent enforcement may be affected by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles. The Company is in compliance in all material respects with the terms and requirements of such Intellectual Property Licenses, other than the Purchaser Licensed IP. To the Company's Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) contravenes, conflicts with or results in a violation or breach of, or gives Company or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Intellectual Property License, other than the Purchaser Licensed IP. With the exception of Purchaser Licensed IP, there are no current renegotiations of any amount to be paid or payable to or by Company under any Intellectual Property License, and no Person has made a written or, to Company's Knowledge, oral demand for such renegotiation. With the exception of Purchaser Licensed IP, Company has not released or, to Company's Knowledge, waived any of its rights under any Intellectual Property License.

iv. Company has used commercially reasonable efforts to protect the proprietary nature of any Owned Intellectual Property necessary for and used by Company in the operation of its business and to maintain in confidence all of its trade secrets, and confidential information (and any information intended to be a trade secret or confidential information), including commercially reasonable efforts not to disclose such trade secrets or confidential information other than pursuant to the terms of a written agreement that requires the Person receiving such to reasonably protect and not disclose such.

v. Except as set forth in Schedule 4(p)(v), no present or former employee, officer, consultant or contractor of the Company has any ownership, license or other right, title or interest in any Owned Intellectual Property necessary for and used by the Company in the operation of its business. In each case in which the Company has acquired ownership (or purported to acquire ownership) of any material Intellectual Property from any Person, the Company has obtained a written assignment sufficient to irrevocably transfer ownership of all rights with respect to such Intellectual Property or other intellectual property to the Company. To the Company's Knowledge, no Person (other than the Company) has an interest or right in or to any improvements, modifications, enhancements, customization or derivatives of any Owned Intellectual Property. Except as set forth on Schedule 4(p)(v), all current and former officers, employees, consultants and vendors of the Company that have participated in the development of any material Owned Intellectual Property have executed a written agreement assigning to the Company any and all Intellectual Property rights, title and interests of such Persons therein.

vi. To the Company's Knowledge, and with the exception of the Purchaser Licensed IP, the Company's use and distribution of the Company Intellectual Property in the conduct of the business (including the design, development, reproduction, manufacture, branding, marketing, use, distribution, import, licensing, provision and sale of the Company's products and services) does not infringe upon, misappropriate or otherwise violate the Intellectual Property rights of any Person or constitute unfair competition or trade practices under any applicable Laws. There is no past, pending or, to the Company's Knowledge, threatened Proceeding involving the Company or any Company Intellectual Property (other than the Purchaser Licensed IP) alleging that any use or distribution of Company Intellectual Property infringes, misappropriates or otherwise violates the rights of any Person, and the Company has not received any notice that it must license or refrain from using any Intellectual Property or any offer by any other Person to license any Intellectual Property to the Company. To the Company's Knowledge and with the exception of the Purchaser Licensed IP, no Person is infringing, misappropriating or otherwise violating or conflicting with any the Company Intellectual Property, or has previously done so.

vii. Except as set forth on Schedule 4(p)(vii), no source code for any Software that constitutes Owned Intellectual Property has been delivered, licensed, or is subject to any source code escrow obligation by the Company to a Person. The Company is not obligated under any Open Source License to distribute or make available any Intellectual Property (including any source code or other materials) or grant any Intellectual Property or other rights to any Person.

viii. The Company has provided to the public reasonable disclosure with respect to its privacy policies and related practices as required by applicable Law. Such disclosures have not contained any material omissions of the Company's privacy policies and related practices. True and correct copies of all such privacy policies and practices have been provided to the Purchaser. The Company has made commercially reasonable efforts to ensure that the Company has: (A) complied in all material respects with the Company's privacy policies and complied in all material respects with all applicable Laws governing the receipt, collection, use, breach notification, storage, processing, sharing, security, disclosure or transfer of any personally identifiable information that is possessed by or otherwise subject to the control of the Company (collectively, "**PII**") and bulk commercial faxes and email (including unsolicited communications) and (B) implemented and maintained commercially reasonable measures, including, but not limited to, administrative, technical, and physical safeguards to protect the confidentiality, integrity and security of the PII, reasonably designed to assure that the Company complies in all material respects with (1) such Laws, (2) any notice to or consent required by applicable Laws of the provider of the PII, (3) any policy adopted by the Company, (4) the material terms of any Contract made by the Company that is applicable to such PII, or (5) any applicable privacy policy or privacy statement from time to time disclosed to the providers of the PII by the Company. The Company has the right to use all of the information in each of its databases as is necessary for and used by the Company in the operation of its business. Except for disclosures of PII required by applicable Law, authorized by the provider of PII or provided for in the Company's privacy policies, the Company has not sold, leased or otherwise made available to third parties any PII, and the Company has utilized reasonable tools and procedures in an effort to prevent loss, damage, and unauthorized access, use, disclosure, modification, or other misuse of PII. To the Company's Knowledge, there has been no material loss, damage, breach of security, or unauthorized access, use, disclosure, modification, or other misuse of any PII. No claims have been asserted against the Company in writing or, to the Company's Knowledge, threatened or are reasonably expected to be asserted or threatened, with respect to any PII. Upon the Closing, the Purchaser will continue to have the right to use such PII on identical terms and conditions as the Company enjoyed immediately prior to the Closing.

ix. The Software used by the Company is substantially free of any material defects, bugs and errors and disabling software, code or instructions, spyware, Trojan horses, worms, viruses or other software routines that permit or cause unauthorized access to, or disruption, impairment, disablement, or destruction of, Software, data or other materials ("**Contaminants**"). The Company has taken commercially reasonable steps and implemented commercially reasonable safeguards in an effort to ensure that the Systems (as defined below) are substantially free from Contaminants.

x. The Technology owned or licensed by the Company, excluding the Purchaser Licensed IP, but otherwise including computer hardware and tangible embodiments of Software used by the Company (collectively, the "**Systems**"), is sufficient for the Company to conduct the business as currently conducted. The Systems used to conduct the business as currently conducted are in reasonable working condition.

xi. The Company does not provide its customers with any warranties on the products and goods sold by the Company in addition to or outside of the warranties provided by the manufacturers of such products or goods.

q. Litigation. Except as disclosed on Schedule 4(q), there is no, and in the past three (3) years has been no, litigation, proceeding (in law or in equity), governmental or other investigation before any commission or other administrative authority, or arbitration pending or, to the Company's Knowledge, threatened against or affecting the Company or any of its properties or any of its respective officers or directors (in their capacities as such), including any inquiry regarding the Company's qualification to hold or receive any Permit. There is no, and in the past three (3) years has been no, litigation, proceeding or arbitration by the Company pending or threatened against others.

r. Compliance with Laws. The Company is not a party to or bound by any Order entered into in any administrative, judicial or arbitration proceeding with any Governmental Body with respect to the Company's properties, assets, personnel or business activities. The Company is not in material violation of, delinquent under or, to the Company's Knowledge, being investigated for violation of any material Law, Order or Permit by which the Company is bound or to which the Company's properties are subject.

s. Brokers. The Company has no Liability to pay any fees or commissions to any broker or finder with respect to the Merger.

t. Employees and Consultants. The Company has provided to Purchaser a true and complete list of the names of all current employees (including, without limitation, part-time employees and temporary employees), leased employees, independent contractors and consultants of the Company, together with their respective salaries or wages, other compensation, dates of employment and current positions.

u. Taxes. The Company has filed all material tax returns required to be filed with any governmental body and all tax returns which have been filed are true, correct and complete in all material respects. The Company has timely paid all material Taxes (whether or not shown on a tax return) required to be paid, or claimed by any governmental body to be required to be paid, except Taxes that are being contested in good faith. The Company has established an adequate reserve on its Financial Statements and Interim Financial Statements in accordance with its applicable method of financial accounting for all Taxes of the Company that have accrued but not yet become due and owing. The Company's Taxes did not, and all Taxes of the Company that have not yet become due and owing will not, exceed such reserve as adjusted for operations and transactions through the Closing in accordance with past practice and custom of the Company in filing its tax returns. All Taxes and other assessments and levies which the Company was or is required to withhold or collect have been withheld and collected and have been paid over to the proper governmental body. The Company has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to any Tax payment, assessment, deficiency or collection. Except as set forth in Schedule 4(u), (i) the Company has never received written notice of any audit or of any proposed deficiencies from the IRS or any other taxing authority (other than routine audits undertaken in the ordinary course and which have been resolved on or prior to the date hereof); (ii) there are in effect no waivers of applicable statutes of limitations with respect to any Taxes owed by the Company for any year; (iii) neither the IRS nor any other taxing authority is now asserting or, to the Company's Knowledge, threatening to assert against the Company any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith; (iv) the Company has never been a member of an affiliated group of corporations filing a combined federal income Tax return, nor does the Company have any liability for Taxes of any other Person under Treasury Regulations § 1.1502-6 or otherwise; and (v) the Company has not filed a consent under Section 341(t) of the Code, concerning collapsible corporations. For the avoidance of doubt, nothing in this Section 4(u) shall be construed as a representation or warranty with respect to (i) the amount or availability of any net operating loss, Tax basis or other Tax attribute of the Company in any taxable period (or portion thereof) beginning after the Closing Date or (ii) any Tax position that Purchaser or its Affiliates (including the Surviving Corporation) may take in respect of any such taxable period (or portion thereof).

v. Employee Matters. The Company is in compliance in all material respects with all currently applicable laws and regulations respecting terms and conditions of employment, including, without limitation, applicant and employee background checking, immigration laws, discrimination laws, verification of employment eligibility, employee leave laws, classification of workers as employees and independent contractors, wage and hour laws, and occupational safety and health laws. There are no proceedings pending or, to the Company's Knowledge, reasonably expected or threatened, between the Company and any of its current or former employees, including, without limitation, any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortious conduct, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic disadvantage. There are no claims pending, or, to the Company's Knowledge, reasonably expected or threatened, against the Company under any workers' compensation or long-term disability plan or policy. The Company has no material unsatisfied compensatory obligations to any employees, former employees or qualified beneficiaries. The Company is not a party to any collective bargaining agreement or other labor union contract, nor does the Company know of any activities or proceedings of any labor union to organize the employees or the Company. The Company has provided all employees with all wages, benefits, relocation benefits, stock options, bonuses and incentives, and all other compensation that became due and payable through the date of this Agreement.

w. Employee Benefits.

i. Schedule 4(w) contains a correct and complete list of all Employee Plans. With respect to each Employee Plan, the Company has delivered or made available to Purchaser true, complete and correct copies of the plan documents and summary plan descriptions or written summary of material terms of any unwritten plan.

ii. Each Employee Plan has been established and administered in all material respects in accordance with its terms and the applicable provisions of ERISA, the Code and all other applicable Laws.

iii. None of the Employee Plans is subject to Title IV of ERISA. Neither the Company nor any of its ERISA Affiliates has incurred any current or projected liability in respect of post-employment health, medical or life insurance benefits for any current or former employees of the Company, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1986, and at the expense of the employee or former employee. Neither the Company nor any of its ERISA Affiliates contributes to or has in the past six (6) years sponsored, maintained, contributed to or had in the past six (6) years any liability in respect of any defined benefit pension plan (as defined in Section 3(35) of ERISA) or plan subject to Section 412 of the Code or Section 302 of ERISA. No Employee Plan is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and neither the Company nor any of its ERISA Affiliates has within the past six (6) years sponsored or contributed to, or had any liability in respect of, any such multiemployer plan.

x. Insurance. Schedule 4(x) of the Company Disclosure Schedule sets forth an accurate summary of the insurance policies currently maintained by the Company. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid, and the Company is otherwise in compliance with the terms of such policies and bonds. The Company has no Knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

y. The Company Capital Stock converted into Consideration Common Stock as contemplated hereunder constitutes "control" of the Company within the meaning of Code Section 368(c) and so satisfies the requirements of Treasury Regulation §1.368-2(j)(3)(i).

z. The Company's assets immediately after the Merger constitute substantially all of the Company's assets and so satisfy the requirements of Treasury Regulation §1.368-2(j)(3)(iii).

aa. The Company operates at least one historic line of business within the meaning of Treasury Regulation §1.368-1(d).

5. **Representations and Warranties of Purchaser**. Except as set forth in the disclosure schedule delivered by Purchaser to the Company and attached hereto (collectively, the "**Purchaser Disclosure Schedule**") (it being understood that all exceptions noted in the Purchaser Disclosure Schedule shall be numbered to correspond to the applicable Section of this Article 5), Purchaser hereby represents and warrants to the Company and each of the Company Stockholders as follows:

a. Organization. Each of Purchaser and Merger Sub is a corporation duly incorporated, validly existing and in good standing, under the Laws of the State of Nevada. Purchaser has qualified as a foreign business and is in good standing under the Laws of all jurisdictions where the nature of Purchaser's business or the location of Purchaser's assets requires such qualification, except where the failure to be so qualified or in good standing would not reasonably be expected to have a Material Adverse Effect. Merger Sub is a newly formed corporation formed solely for the purpose of effecting the Merger and has conducted no business or other activities except in connection with the Merger.

b. Power and Authority. Each of Purchaser and Merger Sub has all necessary corporate power and authority to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement. Purchaser has all necessary corporate power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. Neither the execution and delivery of this Agreement and the applicable Transaction Documents by each of Purchaser and Merger Sub nor the consummation by Purchaser or Merger Sub of the Merger will result in a breach or violation of any of the terms, conditions or provisions of the respective Articles of Incorporation and Bylaws or any Law or Order to which Purchaser or Merger Sub is a party or by which Purchaser or Merger Sub is bound. The board of directors of each of the Purchaser and Merger Sub has unanimously approved this Agreement and the Merger.

c. Enforceability. Each of this Agreement and the Transaction Documents to which any of Purchaser and Merger Sub is a party has been duly executed and delivered by Purchaser and Merger Sub, as applicable, and constitutes a valid and legally binding obligation of Purchaser and Merger Sub, as applicable, enforceable against Purchaser and Merger Sub, as applicable, in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles. Upon execution and delivery by Purchaser and Merger Sub, as applicable, of this Agreement and the Transaction Documents to which Purchaser or Merger Sub is a party will have been duly executed and delivered by Purchaser and Merger Sub, as applicable, and will constitute valid and legally binding obligations of Purchaser and Merger Sub, as applicable, enforceable against Purchaser and Merger Sub, as applicable, in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, moratorium and similar generally applicable Laws regarding creditors' rights or by general equity principles.

d. Consents. Except as disclosed on Schedule 5(d), no consent, authorization, Order or approval of, or filing or registration with, any Person is required for Purchaser's and Merger Sub's execution and delivery of this Agreement and the Transaction Documents or consummation of the Merger, other than (i) the filing of the Articles of Merger as provided in Section 2(a); and (ii) filings with applicable state securities authorities.

e. No Conflicts. Except as disclosed on Schedule 5(e), neither the execution, delivery or performance by the Purchaser or the Merger Sub of this Agreement or the other Transaction Documents, nor the consummation by the Purchaser or the Merger Sub of the Transactions, will (i) violate, conflict with or result in any breach of any provision of the Purchaser's or Merger Sub's Governing Documents, (ii) conflict with, result in a violation or breach of, result in any loss of rights or additional obligations under, or constitute (with or without due notice or lapse of time or both) a default or give rise to any right of termination, cancellation or acceleration under, any of the terms, conditions or provisions of, or result in the payment of any additional amounts or consideration under any of Purchaser's material contracts or material Permit of the Purchaser or Merger Sub, (iii) violate any Order or applicable Law to which the Purchaser or Merger Sub is subject or (iv) except as contemplated by this Agreement or with respect to Permitted Encumbrances, result in the creation of any Lien upon any of the material assets of the Purchaser or the Merger Sub, except, in the case of clauses (ii), (iii) or (iv) above, for such violations, conflicts, breaches, defaults or rights of acceleration, modification or cancellation as would not reasonably be expected to be materially adverse to the Purchaser or Merger Sub or materially delay its ability to consummate the Transactions.

f. Governing Documents. Complete and accurate copies of the Governing Documents, stock records and corporate minute books and records have been furnished by the Purchaser and the Merger Sub for inspection by Company. To the Purchaser's and Merger Sub's Knowledge, neither is in violation of any of the provisions of its Governing Documents.

g. Capitalization.

i. The authorized capital stock of Purchaser consists of 50,000,000 shares of Common Stock, 5,720,000 of which are issued and outstanding, and 3,000,000 shares of Preferred Stock, 45,000 of which are issued and outstanding. All shares of Common Stock are entitled to customary voting rights. The Purchaser has reserved 2,758,260 shares of Common Stock for issuance under its 2019 Stock Plan duly adopted by the Purchaser's board of directors and approved by the Purchaser's stockholders, of which 780,000 have been issued pursuant to valid written option agreements. The Purchaser has available 192,251 shares of Purchaser Common Stock for issuance to certain executives of the Company upon the Company's and/or the Surviving Corporation's receipt of $10,000,000 of accumulative purchase orders for Company and/or the Surviving Corporation equipment, products, and services, from November 21, 2019 through June 30, 2020, such Purchaser Common Stock to be distributed by the Purchaser to certain executives of the Surviving Corporation responsible for achievement of such milestone in Purchaser's sole discretion. All outstanding shares of capital stock of Purchaser have been duly authorized, validly issued, are fully-paid and non-assessable and were issued in compliance with all applicable Laws. When issued in accordance with this Agreement, the shares of Consideration Common Stock will be validly issued, fully paid and non-assessable and will be free and clear of all Encumbrances of any kind except for restrictions of transfer imposed under applicable Laws and the Stockholders' Agreement. The authorized capital stock of Merger Sub consists of 100 shares of Merger Sub Common Stock, all of which are issued and outstanding.

ii. Other than with respect to Merger Sub and except as set forth on Schedule 5(g), neither the Purchaser nor the Merger Sub holds or beneficially owns any direct or indirect interest in any Person (whether it be common or preferred stock or any comparable ownership interest in any Person that is not a corporation), or any subscriptions, options, warrants, rights, calls, convertible securities or other agreements or commitments for any interest in any Person.

iii. Except as disclosed in Schedule 5(g), (i) no Options, subscriptions or purchase rights of any nature to acquire shares of capital stock or other securities of the Purchaser or Merger Sub are authorized, issued or outstanding and neither the Purchaser nor the Merger Sub is obligated in any other manner to issue shares of its capital stock or other securities, except as contemplated by this Agreement, (ii) neither the Purchaser nor the Merger Sub is a party to, and, to the Purchaser's and Merger Sub's Knowledge, there are no, agreements, understandings, trusts or other collaborative arrangements or understandings concerning the voting of the Purchaser's or Merger Sub's stock other than this Agreement and the Stockholders' Agreement, (iii) neither the Purchaser, nor the Merger Sub, is a party to, and, to the Purchaser's and Merger Sub's Knowledge, there are no, agreements, understandings, trusts or other understandings concerning transfers or registration of the Purchaser's or Merger Sub's stock other than this Agreement and the Put and Call Agreement by and among 4DNXT Capital, LLC, Argand Group, LLC, and Dennis Liotta, dated as of June 4, 2019, and (iv) there are no restrictions on the transfer of shares of Purchaser's and Merger Sub's stock other than those imposed by applicable Laws, this Agreement and the Original Stockholders' Agreement. The Purchaser has delivered to the Company true and complete copies of each option agreement evidencing each Purchaser or Merger Sub Option.

iv. Neither the Purchaser nor the Merger Sub has ever adjusted or amended the exercise price of any stock options previously awarded, whether through amendment, cancellation, replacement grant, repricing, or any other means. No stock options, stock appreciation rights or other equity-based awards issued or granted by the Purchaser or Merger Sub are subject to the requirements of Section 409A of the Code. Except as set forth on Schedule 5(g) or in the Articles, neither the Purchaser nor the Merger Sub has any obligation (contingent or otherwise) to purchase or redeem any shares of Purchaser's or Merger Sub's stock.

h. Undisclosed Liabilities. Each of Purchaser and Merger Sub has no Liabilities except for Liabilities (i) provided for or reserved against in the Purchaser Financial Statements, (ii) incurred by Purchaser subsequent to the date of the Purchaser Financial Statements in the ordinary course of business consistent with past practice (none of which results from or related to any breach of contract, breach of warranty, tort, infringement, or violation of Law) or (iii) set forth on Schedule 5(h).

i. Title to Assets. Except as specifically disclosed in the Purchaser Financial Statements or on Schedule 5(i), Purchaser has good title to all of its tangible personal property (including machinery and equipment, inventory, receivables and furniture) shown on the Purchaser Financial Statements, free and clear of any Encumbrances, except for (i) assets which have been disposed of to non-Affiliate third-parties since the date of the Purchaser Financial Statements in the ordinary course of business, (ii) Encumbrances reflected in the Purchaser Financial Statements, and (iii) Permitted Encumbrances. Except as disclosed on Schedule 5(i), all of the Purchaser's assets are located at Purchaser's facilities or in transit to Purchaser's facilities.

j. Material Contracts. All of Purchaser's material contracts are in full force and effect and binding upon the Purchaser, and, to the Purchaser's Knowledge, the other parties thereto. No material default by the Purchaser has occurred under any Contract and, to the Purchaser's Knowledge, no material default by any other party has occurred under any Contract. To the Purchaser's Knowledge, no event has occurred or fact, circumstance or condition exists that, with the lapse of time, the giving of notice or both, or the happening of any further event or existence of any future fact, circumstance or condition, would become a default by the Purchaser under any Contract.

k. Litigation. Except as disclosed on Schedule 5(k), there is no, and in the past three (3) years has been no, litigation, proceeding (in law or in equity), governmental or other investigation before any commission or other administrative authority, or arbitration pending or, to the Purchaser's or Merger Sub's Knowledge, threatened against or affecting the Purchaser or the Merger Sub or any of its properties or any of its respective officers or directors (in their capacities as such), including any inquiry regarding the Purchaser's or Merger Sub's qualification to hold or receive any Permit. There is no litigation, proceeding or arbitration by the Purchaser or the Merger Sub pending or threatened against others.

l. Compliance with Laws. Neither the Purchaser nor the Merger Sub is a party to or bound by any Order entered into in any administrative, judicial or arbitration proceeding with any Governmental Body with respect to the Purchaser's or Merger Sub's properties, assets, personnel or business activities. Neither the Purchaser nor the Merger Sub is in material violation of, delinquent under or, to the Purchaser's or Merger Sub's Knowledge, being investigated for violation of any material Law, Order or Permit by which the Purchaser or Merger Sub is bound or to which the Purchaser's or Merger Sub's properties are subject.

m. Taxes. The Purchaser has filed all material tax returns required to be filed with any governmental body and all tax returns which have been filed are true, correct and complete in all material respects. The Purchaser has timely paid all material Taxes (whether or not shown on a tax return) required to be paid, or claimed by any governmental body to be required to be paid, except Taxes that are being contested in good faith. The Purchaser has established an adequate reserve on its financial statements in accordance with its applicable method of financial accounting for all Taxes of the Purchaser that have accrued but not yet become due and owing. The Purchaser's Taxes did not, and all Taxes of the Purchaser that have not yet become due and owing will not, exceed such reserve as adjusted for operations and transactions through the Closing in accordance with past practice and custom of the Purchaser in filing its tax returns. All Taxes and other assessments and levies which the Purchaser was or is required to withhold or collect have been withheld and collected and have been paid over to the proper governmental body. The Purchaser has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to any Tax payment, assessment, deficiency or collection. Except as set forth in Schedule 5(m), (i) the Purchaser has never received written notice of any audit or of any proposed deficiencies from the IRS or any other taxing authority (other than routine audits undertaken in the ordinary course and which have been resolved on or prior to the date hereof); (ii) there are in effect no waivers of applicable statutes of limitatioris with respect to any Taxes owed by the Purchaser for any year; (iii) neither the IRS nor any other taxing authority is now asserting or, to the Purchaser's Knowledge, threatening to assert against the Purchaser any deficiency or claim for additional Taxes or interest thereon or penalties in connection therewith; (iv) the Purchaser has never been a member of an affiliated group of corporations filing a combined federal income Tax return, nor does the Purchaser have any liability for Taxes of any other Person under Treasury Regulations § 1.1502-6 or otherwise; and (v) the Purchaser has not filed a consent under Section 341(t) of the Code, concerning collapsible corporations. For the avoidance of doubt, Nothing in this Section 5(m) shall be construed as a representation or warranty with respect to (i) the amount or availability of any net operating loss, Tax basis or other Tax attribute of the Purchaser in any taxable period (or portion thereof) beginning after the Closing Date or (ii) any Tax position that Purchaser or its Affiliates (including the Surviving Corporation) may take in respect of any such taxable period (or portion thereof).

n. Brokers. Each of Purchaser and Merger Sub has no Liability to pay any fees or commissions to any broker, finder or agent with respect to the Merger.

6. **Closing and Closing Deliveries**.

a. Closing. The closing of the transactions contemplated hereby (the **"Closing")** shall take place by the electronic exchange of documents and signatures on the date hereof, or at such other place or on such other date as may be mutually agreeable to the parties. The date of the Closing is referred to as the **"Closing Date."**

b. Company Deliveries. In connection with the execution of this Agreement and the consummation of the transactions contemplated hereby, the Company is delivering to the Purchaser the following, all of which shall be deemed to be delivered simultaneously:

i. The Restated Articles, filed with the Secretary of State of the State of Nevada;

ii. A Stockholder Questionnaire, duly executed by each Company Stockholder, stating, among other things, whether such Company Stockholder is an "accredited investor;"

iii. A Letter of Transmittal, duly executed by each Company Stockholder;

iv. A Stockholders' Agreement Joinder, duly executed by each Company Stockholder;

v. A Merger Agreement Joinder, duly executed by the Company Stockholders holding at least 95% of the Company Capital Stock;

vi. A blank stock power in the name of Purchaser, duly endorsed by each Indemnifying Stockholder;

vii. Evidence that (i) the Plan was terminated and (ii) all Options issued thereunder were cancelled for no consideration, on or before December 31, 2019;

viii. Evidence reasonably satisfactory to Purchaser from Crown Capital Investments and Hannah Industries LLC that the total balance of the CCI-Finance LLC Hannah Industries Lease (the "**CCI-Hannah Lease**") will be fully satisfied with payment of the CCI-Hannah Lease Investment (as defined below);

ix. A certificate executed by an officer of the Company certifying as to (A) the amount of the Transaction Expenses incurred by the Company as of the date of Closing, and (B) the Indebtedness of the Company as of the date of Closing (the "**Closing Certificate**");

x. A certificate of an executive officer of the Company certifying as to: (A) the Restated Articles; (B) the Bylaws; (C) the resolutions adopted by the Company Stockholders and the Company Board authorizing and approving the execution, delivery and performance by the Company of this Agreement; and (D) the incumbency and signatures of the officers of the Company;

xi. A certificate of the Secretary of State of the State of Nevada, as of a date not earlier than ten (10) days prior to the Closing Date, as to the existence and good standing of the Company in the State of Nevada;

xii. (A) A properly executed statement in a form reasonably satisfactory to Purchaser and in compliance with Treasury Regulation Section 1.1445-2(c)(3) certifying that shares of capital stock of the Company do not constitute "United States real property interests" under Section 897(c) of the Code and (B) a notice to Purchaser, as agent for the Company, a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) along with written authorization for Purchaser to deliver such notice form to the Internal Revenue Service on behalf of the Company; and

xiii. Evidence reasonably satisfactory to Purchaser that the consents set forth on Schedule 6(b)(xiii) have been obtained by the Company.

c. Purchaser's Deliveries. In connection with the execution of this Agreement and the consummation of the transactions contemplated hereby, Purchaser is delivering to the Company the following, all of which shall be deemed to be delivered simultaneously:

i. Stock certificates representing shares of Consideration Common Stock issued to Company Stockholders;

ii. A certificate of the Secretary of State of the State of Nevada as of a date not earlier than ten (10) days prior to the Closing Date, as to the existence and good standing of Purchaser and the Merger Sub in the State of Nevada;

iii. A certificate of an executive officer of Purchaser certifying as to: (A) the Articles of Incorporation of Purchaser as of the date of this Agreement; and (B) the Bylaws of Purchaser as of the date of this Agreement; (C) the Stockholders' Agreement of the Purchaser as of the date of this Agreement (D) the resolutions adopted by the board of directors of Purchaser, authorizing and approving the execution, delivery and performance by Purchaser of this Agreement and the Purchaser Transaction Documents; and (E) the incumbency and signatures of the officers of Purchaser;

iv. A certificate of an executive officer of the Merger Sub certifying as to: (A) the Articles of Incorporation of the Merger Sub as of the date of this Agreement; and (B) the Bylaws of Merger Sub as of the date of this Agreement; (C) the resolutions adopted by the board of directors of the Merger Sub, authorizing and approving the execution, delivery and performance by Merger Sub of this Agreement and the Transaction Documents; and (D) the incumbency and signatures of the officers of Merger Sub;

v. The Stockholders' Agreement, duly executed by Purchaser;

vi. An executed Termination and Release of all agreements related to the Purchaser Licensed IP; and

vii. An amendment to Purchaser's 2019 Stock Plan increasing the number of shares of Common Stock of Purchaser issuable under such plan to 2,758,260.

d. CCI-Finance LLC Hannah Industries Lease. Concurrently with the Closing, Purchaser shall commit $1,140,000 (the "**CCI-Hannah Lease Investment**") to satisfy the remaining balance of the financing required for the CCI-Hannah Lease. The parties hereby acknowledge and agree that the CCI-Hannah Lease Investment will be the last money the Company will invest, allocate, or spend on the CCI-Hannah Lease.

7. **Indemnification**.

a. Indemnification by the Indemnifying Stockholders.

i. All representations, warranties, covenants and agreements made by the Company herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the execution and delivery of this Agreement and the Closing for a period of eighteen (18) months following the Closing (and thereafter until resolved if a claim in respect thereof has been made prior to such date); provided, however, (A) the representations and warranties contained in Section 4(a) (Organization), Section 4(b) (Power and Authority), Section 4(c) (Enforceability), Section 4(g) (Capitalization), and Section 4(s) (Brokers), (collectively, the "**Fundamental Representations**") shall survive the Closing hereunder and continue in full force and effect until the later of (i) the expiration of the applicable statute of limitations period for the underlying subject matter after taking into account all extensions, or (ii) for each Indemnifying Stockholder, the date that such Indemnifying Stockholder transfers its Consideration Common Stock to an unrelated third party pursuant to a permitted transfer under any applicable agreements between such Indemnifying Stockholder and the Purchaser; (B) the representations and warranties contained in Section 4(u) (Taxes) and Section 4(w) (Employee Benefits) (the "**Extended Representations**") shall survive the Closing hereunder and continue in full force and effect until the expiration of the applicable statute of limitations period for the underlying subject matter after taking into account all extensions, and (C) claims for indemnification involving fraud or intentional misrepresentation shall survive (I) until the expiration of the statute of limitations applicable to such claims (and thereafter until resolved if a claim in respect thereof has been made prior to such date) with respect to such matters, or (II) indefinitely if no statute of limitations apply. There shall be no termination of any representation or warranty as to which a claim has been asserted by Purchaser prior to the termination of such survival period.

ii. The Indemnifying Stockholders shall severally, and not joint and severally, indemnify and hold harmless Purchaser and its directors, officers, shareholders, employees, agents, Affiliates, attorneys and representatives, and each Person, if any, who controls or may control the Purchaser or the Surviving Corporation within the meaning of the Securities Act (individually a **"Purchaser Indemnified Person"** and collectively the **"Purchaser Indemnified Persons")** from and against any and all losses, costs, damages, liabilities, Taxes and expenses, including, without limitation, costs and expenses arising from claims, demands, actions, causes of action, including, without limitation, reasonable legal fees (collectively, **"Damages"),** resulting from or arising out of:

A) any misrepresentation or breach or nonfulfillment of, or default in connection with, any of the representations and warranties given or made by the Company in this Agreement, or any exhibit or schedule to this Agreement or in any certificate or document furnished pursuant hereto by the Company to Purchaser;

B) any non-fulfillment or breach of any covenant or agreement made by the Company in this Agreement;

C) the exercise by any Dissenting Stockholder of dissenters' rights under Nevada Act or other applicable law to the extent that the amount received by such Dissenting Stockholder exceeds the merger consideration set forth in Section 3;

D) Taxes related to any Pre-Closing Tax Period, other than the Sales Tax Liability;

E) Transaction Expenses and Indebtedness of the Company remaining unpaid at the Closing in excess of the amounts set forth on the Closing Certificate;

F) any liabilities of the Company arising out of or related to the Plan and the options issued thereunder, including but not limited to any liabilities related to any failure to withhold any amounts, for taxes or otherwise, required to be withheld by the Company under applicable law, and any claims brought against the Company by former holders of Company Options related to the Plan or the options issued thereunder; provided, however, this Section 7(a)(ii)(F) shall not apply with respect to any liabilities arising out of or related the Plan or the options issued or cancelled thereunder with respect to any former holder that is given an offer of employment or other contractual engagement to provide services to the Purchaser; and

G) any matter referred to on Section 7(a)(ii) of the Disclosure Schedule.

iii. For the avoidance of doubt, no Company Stockholder, other than the Indemnifying Stockholders, shall have any obligation under this Section 7 and, notwithstanding anything to the contrary contained herein, no Indemnifying Stockholder shall have any obligation to indemnify the Purchaser for any punitive, consequential or incidental damages.

iv. Each of the parties acknowledges and agrees that the sole and exclusive remedy of Purchaser and Merger Sub with respect to any and all claims (other than claims arising from fraud on the part of the Company in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation of the Company set forth herein or in any document delivered by the Company pursuant to this Agreement shall be pursuant to the indemnification provisions set forth in this Section 7.

b. Indemnification by Purchaser and Merger Sub.

i. All representations, warranties, covenants and agreements made by the Purchaser and Merger Sub herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the execution and delivery of this Agreement and the Closing for a period of eighteen (18) months following the Closing (and thereafter until resolved if a claim in respect thereof has been made prior to such date); provided, however, (A) the representations and warranties contained in Section 5(a) (Organization), Section 5(b) (Power and Authority), Section 5(c) (Enforceability), Section 5(e) (Capitalization), and Section 5(n) (Brokers) (collectively, the "**Purchaser Fundamental Representations**") shall survive indefinitely, and (B) claims for indemnification involving fraud or intentional misrepresentation shall survive (I) until the expiration of the statute of limitations applicable to such claims (and thereafter until resolved if a claim in respect thereof has been made prior to such date) with respect to such matters, or (II) indefinitely if no statute of limitations apply. There shall be no termination of any representation or warranty as to which a claim has been asserted by Purchaser prior to the termination of such survival period.

ii. The Purchaser shall severally indemnify and hold harmless the Company Stockholders (individually a **"Seller Indemnified Person"** and collectively the **"Seller Indemnified Persons")** from and against any and all Damages resulting from or arising out of:

A) any misrepresentation or breach or nonfulfillment of, or default in connection with, any of the representations and warranties given or made by the Purchaser or Merger Sub in this Agreement, the Purchaser Disclosure Schedule or any exhibit or schedule to this Agreement or in any certificate or document furnished pursuant hereto by the Purchaser or Merger Sub to the Company;

B) any non-fulfillment or breach of any covenant or agreement made by the Purchaser or Merger Sub in this Agreement; and

C) Transaction Expenses and Indebtedness of the Company set forth on the Closing Certificate.

iii. Each of the parties acknowledges and agrees that the sole and exclusive remedy of the Company Stockholders with respect to any and all claims (other than claims arising from fraud on the part of the Purchaser or Merger Sub in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation of the Purchaser or Merger Sub set forth herein or in any document delivered by the Purchaser or Merger Sub pursuant to this Agreement shall be pursuant to the indemnification provisions set forth in this Section 7.

c. Limitations on Indemnification Obligations.

i. Indemnifying Stockholders shall not be required to make any indemnification payment pursuant to Section 7(a)(ii)(A) until such time as the total amount of Damages that have been directly or indirectly suffered or incurred by any one or more of the Purchaser Indemnified Persons exceeds seventy-five thousand dollars ($75,000) (the "**Deductible**") in the aggregate, in which case the Purchaser Indemnified Persons shall be entitled to recover the aggregate amount of all such Damages in excess of the Deductible; *provided* that the foregoing limitations will not apply (and will not limit the indemnification or other obligations of Indemnifying Stockholders) (i) in the event of intentional misrepresentation or fraud or (ii) to inaccuracies in or breaches of any of the Fundamental Representations or the Extended Representations.

ii. Purchaser shall not be required to make any indemnification payment pursuant to Section 7(b)(ii)(A) until such time as the total amount of Damages that have been directly or indirectly suffered or incurred by any one or more of the Seller Indemnified Persons exceeds seventy-five thousand dollars ($75,000) (the "**Purchaser Deductible**") in the aggregate, in which case the Seller Indemnified Persons shall be entitled to recover the aggregate amount of all such Damages in excess of the Purchaser Deductible; *provided* that the foregoing limitations will not apply (and will not limit the indemnification or other obligations of Purchaser) (i) in the event of intentional misrepresentation or fraud or (ii) to inaccuracies in or breaches of any of the Purchaser Fundamental Representations.

iii. Other than in the event of intentional misrepresentation or fraud, the aggregate amount of Damages for which the Purchaser Indemnified Persons shall be entitled to indemnification pursuant to this Agreement shall be (i) limited to the value of the Consideration Common Stock (measured on the date of this Agreement) for breaches of the Fundamental Representations or the Extended Representations and other claims pursuant to this Agreement and (ii) limited to $1,000,000 for all other breaches under Section 7(a)(ii)(A) (the "**Cap**").

iv. Other than in the event of intentional misrepresentation or fraud, the aggregate amount of Damages for which the Seller Indemnified Persons shall be entitled to indemnification pursuant to this Agreement shall be (i) limited to the value of the Consideration Common Stock (measured on the date of this Agreement) for breaches of the Fundamental Representations or the Extended Representations and other claims pursuant to this Agreement and (ii) limited to $1,000,000 for all other breaches under Section 7(b)(ii)(A) (the "**Purchaser Cap**").

v. Payments by an Indemnifying Party pursuant to Section 7 in respect to any Damages (taking into account any cap on such Damages hereunder) shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution, Tax benefits, payments from other responsible parties or other similar payment actually received by the Indemnified Party in respect of any such claim, less any related reasonable costs and expenses, including the aggregate cost of pursuing any such related insurance claims.

d. Indemnification Claims.

i. Upon receipt by the party pursuing an indemnification claim under this Section 7 (the "**Indemnified Party**") of a certificate signed by any officer of the Indemnified Party (an **"Officer's Certificate")** stating that Damages exist with respect to the indemnification obligations of the party against who the indemnification is sought (the "**Indemnifying Party**") set forth in Section 7(a) or Section 7(b), and specifying in reasonable detail the individual items of such Damages included in the amount so stated, the date each such item was paid, or properly accrued or arose, and the nature of the misrepresentation, breach of warranty, covenant or claim to which such item is related, the Indemnified Party shall, subject to the provisions of this Section 7, be entitled to indemnification by the Indemnifying Party.

ii. The Purchaser or the Stockholders' Representative, as applicable, shall have a period of thirty (30) days from and after delivery of any Officer's Certificate to deliver to the Indemnified Party a response, in which the Purchaser or Stockholders' Representative, as applicable, shall: (A) agree that the Indemnified Party is entitled to receive all of the requested Damages or (B) dispute that the Indemnified Party is entitled to receive the requested Damages.

iii. If the Purchaser or Stockholders' Representative, as applicable, disputes any claim or claims made in any Officer's Certificate, the Indemnified Party shall have thirty (30) days to respond in a written statement to the objection of the Purchaser or Stockholders' Representative. If after such thirty (30) day period there remains a dispute as to any claims, the Stockholders' Representative and the Purchaser shall attempt in good faith for thirty (30) days to agree upon the rights of the respective parties with respect to each of such claims (the **"Claims Period").**

e. Resolution of Conflicts. If no agreement can be reached after good faith negotiation between the parties pursuant to Section 7(d), either the Purchaser or the Stockholders' Representative may initiate formal legal action to resolve such dispute.

f. Stockholders' Representative. By virtue of voting in favor of the adoption and approval of this Agreement, the approval of the principal terms of the Merger, and the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive Consideration Common Stock pursuant to this Agreement, or by executing and delivering a Letter of Transmittal in connection with the Transactions, each Indemnifying Stockholder shall be deemed to have nominated, constituted and appointed, and does hereby irrevocably nominate, constitute and appoint Christopher J. Graham, as the representative, agent and true and lawful attorney in fact of the Indemnifying Stockholders, for all purposes in connection with this Agreement and the other Transaction Documents, with full power of substitution, to act in the name, place and stead of the Indemnifying Stockholders for purposes of executing any documents and taking any actions that the Stockholders' Representative may, in the Stockholders' Representative's sole discretion, determine to be necessary, desirable or appropriate in connection with the Transactions. The Stockholders' Representative shall be constituted and appointed as agent and attorney-in-fact for and on behalf of the Indemnifying Stockholders and shall have full power authority to represent, to give and receive notices and communications, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to act on such Indemnifying Stockholders behalf with respect to the matters set forth in this Section 7, including giving and receiving all notices and communications to be given or received with respect to the matters set forth herein and to take all actions necessary or appropriate in the judgment of the Stockholders' Representative for the interpretation of this Agreement and accomplishment of the foregoing. The Stockholders' Representative shall have no liability to any Indemnifying Stockholders, for any action taken or not taken, decision made or instruction given by the Stockholders' Representative in connection with this Agreement; provided, however, that the Stockholders' Representative may be liable to the Indemnifying Stockholders in the event of gross negligence, fraud or intentional misconduct. The Stockholders' Representative may also refrain from taking any such actions in its sole discretion. Without limiting the generality of the foregoing, the Stockholders' Representative shall have full power and authority to interpret all the terms and provisions of this Agreement and to consent to any amendment hereof for, in the name and on behalf of all such Indemnifying Stockholders and such successors.

g. Actions of the Stockholders' Representative. A decision, act, consent or instruction of the Stockholders' Representative shall constitute a decision of all Indemnifying Stockholders with respect to the matters set forth herein and shall be final, binding and conclusive upon each such Indemnifying Stockholder, and Purchaser may rely upon any decision, act, consent or instruction of the Stockholders' Representative as being the decision, act, consent or instruction of each and every such Indemnifying Stockholder. The Purchaser is hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholders' Representative.

h. Third-Party Claims. In the event an Indemnified Party becomes aware of a third-party claim which the Indemnified Party believes may result in a right to indemnification pursuant to this Section 7, the Indemnified Party shall promptly, and in any event within ten (10) days thereof, notify the Purchaser or Stockholders' Representative, as applicable, of such claim and all known material facts related thereto. The Indemnified Party shall have the right in its sole discretion to defend or settle any such claim, provided that the Indemnified Party shall keep the Purchaser or Stockholders' Representative, as applicable, advised of the status of such third-party claim and the defense thereof and allow the Purchaser or the Stockholders' Representative to participate in such defense with counsel of its choice (and at such party's expense). The Indemnified Party shall not consent to the entry of any judgment or enter into any settlement without the consent of the Indemnifying Party (or Stockholders' Representative, as applicable), which consent shall not be unreasonably withheld, delayed or conditioned. In the event that the Purchaser or Stockholders' Representative, as applicable, has consented to any such settlement, the Indemnifying Party shall have no power or authority to object under Section 7(d) or any other provision of this Section 7 to the amount of any claim by the Indemnified Party for indemnity with respect to such settlement.

Notwithstanding the foregoing, in the event an Indemnified Party becomes aware of a third party claim which, in the reasonable judgment of the Indemnified Party, (i) does not involve Intellectual Property of the Purchaser, and (ii) does not involve any type of injunctive relief, the Indemnified Party shall promptly notify the Indemnifying Party (or Stockholders' Representative, as applicable), in writing, and the Indemnifying Party (or Stockholders' Representative, as applicable), shall have the right, in its sole discretion, to assume and thereafter conduct the defense of any such claim with counsel of its choice reasonably satisfactory to the Indemnified Party (at the Indemnifying Party's expense). Neither the Indemnifying Party nor the Stockholders' Representative will consent to the entry of any judgment or enter into any settlement without the consent of the Purchaser or Stockholders' Representative, as applicable, which consent shall not be unreasonably withheld, delayed or conditioned.

i. Payment of Indemnification Claims.

i. From and after the Closing Date any indemnification sought by a Purchaser Indemnified Person shall be recovered by such Purchaser Indemnified Person by the forfeiture of such number of shares Consideration Common Stock then held by the Indemnifying Stockholders having value equal to the amount of Damages suffered by the Purchaser Indemnified Person (the "**Seller Indemnification Shares**"). The value of the Consideration Common Stock shall be the fair market value on the date such claim is made, as determined by an independent third-party appraiser mutually agreed to in good faith by the board of directors of the Surviving Corporation and the Stockholders' Representative.

ii. As security for indemnification claims and to ensure the adequate payment of any claims made under this Section 7, each Indemnifying Stockholder shall execute a stock power, in the name of Purchaser and endorsed in blank, to be held by counsel to the Purchaser until the expiration of the survival period of last-surviving Extended Representation. In the event of any claim for indemnification under this Section 7 that is agreed upon by the Purchaser and Stockholders' Representative pursuant to Section 7(d), or that is finally determined by a court of competent jurisdiction pursuant to Section 7(e), such stock power shall become effective with respect to the Seller Indemnification Shares and the number of Seller Indemnification Shares with a value equal to the amount of such Damages agreed upon or finally determined shall be transferred from the Indemnifying Stockholders to the Purchaser without any further action by the Indemnifying Stockholders.

iii. The Seller Indemnification Shares shall be transferred from the Indemnifying Stockholders on a pro rata basis based on each Indemnifying Stockholder's ownership of the Consideration Common Stock held by all Indemnifying Stockholders.

iv. From and after the Closing Date any indemnification sought by the Company Stockholders shall be recovered by such Seller Indemnified Person by the issuance by the Purchaser of such number of additional shares of Purchaser Common Stock having value equal to the amount of Damages suffered by the Seller Indemnified Person (the "**Purchaser Indemnification Shares**"). The value of the Purchaser Indemnification Shares shall be the fair market value on the date such claim is made, as determined by an independent third-party appraiser mutually agreed to in good faith by the board of directors of the Surviving Corporation and the Company Stockholders.

8. **Tax Covenants**.

a. Reporting. The Purchaser and Company intend, by executing this Agreement, to adopt a plan of reorganization within the meaning of Section 354(a)(1) of the Code, and to cause the Merger to qualify as a "reorganization" under the provisions of Section 368(a)(2)(E) of the Code (or, in the alternative, such other applicable tax-free reorganization provision under Section 368 of the Code). Purchaser and the Indemnifying Stockholders will report the Merger as such a reorganization in all tax returns and all financial reporting, and will take no position contrary to such reporting unless otherwise required by a final determination of a Tax Authority or a court of Law. After the Closing, Purchaser and its Affiliates and the Indemnifying Stockholders will not take any action, or fail to take any action, to the extent such action or failure to act may reasonably be expected to jeopardize the qualification of the Merger as a reorganization under Section 368 of the Code.

b. Cooperation. Purchaser and the Company shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the preparation and filing of tax returns and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information reasonably relevant to any such audit, litigation, or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Purchaser and the Company agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any Pre-Closing Tax Period until expiration of the statute of limitations, and to abide by all record retention agreements entered into with any governmental authority. To the extent requested by the Stockholders' Representative, the Purchaser shall, before filing with an applicable governmental authority, draft copies of any income or other material tax returns of the Company that relate to a taxable period (or portion thereof) ending on or prior to the Closing Date and the Purchaser and Stockholders' Representative shall cooperate in good faith to resolve any comments from the Stockholders' Representative with respect thereto.

9. **Fees and Expenses.** Except as otherwise set forth in this Agreement, the Company, on the one hand, and Purchaser and Merger Sub, on the other hand, will each bear its own costs and expenses (including attorneys' fees, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, execution and delivery of this Agreement and the Transaction Documents and the consummation of the Merger.

10. **Governing Law; Exclusive Jurisdiction.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES THEREOF. Any Proceeding based upon, arising out of or related to this Agreement or the Transactions must be brought in the federal state courts of located in Clark County, Nevada, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum,.

11. **Assignment.** No party hereto shall assign this Agreement or any part hereof without the prior written consent of the other parties. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

12. **Amendment and Waiver.** This Agreement may be amended or modified in whole or in part, only by a duly authorized agreement in writing executed in the same manner as this Agreement and which makes reference to this Agreement. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other breach of this Agreement or any of the documents, agreements and instruments executed in connection herewith or contemplated hereby.

13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of an original, and such counterparts together shall constitute one and the same instrument. A facsimile or PDF signature shall be acceptable as an original for all purposes.

14. **Notices.** All notices, consents and other communications to be sent or given hereunder by any of the parties shall in every case be in writing and shall be deemed properly served if (i) delivered personally, (ii) delivered by a recognized overnight courier service, or sent by e-mail transmission with a confirmation copy sent by overnight courier, in each case, to the parties at the addresses and facsimile numbers as set forth below or at such other addresses and facsimile numbers as may be furnished in writing:

If to the Stockholders' Representative:

[ ]

If to Purchaser or Merger Sub:

Agrify Corporation
1600 District Ave, Unit 106
Burlington, MA 01803
Attn: Raymond Chang
Fax: (781) 832-2050

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

Nutter, McClennen & Fish LLP
155 Seaport Blvd
Boston, MA 02210
Attn: Joshua E. French
Fax: (617) 310-9357

If to the Company:

Trigrow Systems, Inc.
145 Westminster Drive
Atlanta, Georgia 30309
Attn: Richard Weinstein

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

Rice Reuther Sullivan & Carroll, LLP
3800 Howard Hughes Pkwy, Suite 1200
Las Vegas, Nevada 89169
Attn: Krisanne S. Cunningham, Esq.
Fax: (702) 732-7110

Date of service of such notice shall be (x) the date such notice is personally delivered, (y) three (3) days after the date of delivery to the overnight courier if sent by overnight courier, or (z) the next succeeding business day after transmission by electronic transmission.

15. **No Third Party Beneficiaries.** No person or entity who is not a party to this Agreement, including, but not limited to, any employee or former employee of the Company, shall be deemed to be a beneficiary of any provision of this Agreement, and no such person shall have any claim, cause of action, right or remedy pursuant to this Agreement.

16. **Entire Agreement.** This Agreement, including the Schedules, Exhibits, the Company Disclosure Schedule and the Purchaser Disclosure Schedule attached hereto, all agreements executed in connection herewith, and the Purchaser Transaction Documents, embody the entire agreement and understanding of the parties with respect to the transactions contemplated by this Agreement. This Agreement supersedes all prior discussions, negotiations, agreements and understandings (both written and oral) between the parties with respect to the transactions contemplated hereby that are not reflected or set forth in this Agreement, the Purchaser Transaction Documents, the Schedules, the Exhibits, the Company Disclosure Schedule or the Purchaser Disclosure Schedule attached hereto.

17. **Further Assurances.** Each party hereto agrees to promptly execute and deliver all further instruments and documents and take all further action necessary or appropriate or that the other party may reasonably request in order to effect the purposes of this Agreement and the Transaction Documents.

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

19. **Public Announcements.** No party to this Agreement shall issue any press release or other public document or make any public statement relating to this Agreement or the terms, conditions or other matters contained herein without obtaining the prior approval of the other parties. The Company and Purchaser will consult with each other and agree upon the timing of and the means by which the Company's employees, customers, suppliers and others having dealings with the Company will be informed of the transactions contemplated by this Agreement. Nothing in this Section 19 shall require either party to obtain consent to make, or prevent either party from making, any public announcements or disclosures in such form as may be required by, or deemed advisable by such party's legal counsel pursuant to, the rules of any stock exchange or national securities association or any applicable legal requirements.

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

21. **Remedies Cumulative.** Except as otherwise provided herein, including without limitation Section 7(a)(iv), any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

22. **Acknowledgment.** It is acknowledged by each of the parties hereto that the Company has retained Rice Reuther Sullivan & Carroll, LLP ("RRSC") to act as its counsel in connection with the transactions contemplated hereby and that RRSC has not acted as counsel for any other Person in connection with the transactions contemplated hereby for conflict of interest or any other purposes. Purchaser, Merger Sub and the Company agree that any attorney-client privilege and the expectation of client confidence attaching as a result of RRSC's representation of the Company related to the preparation for, and negotiation and consummation of, the transactions contemplated by this Agreement, including all communications among RRSC and the Company and its Affiliates relating to the preparation for, and negotiation and consummation of, the transactions contemplated by this Agreement, shall survive the Closing and shall remain in effect. Furthermore, effective as of the Closing, (i) all communications (and materials relating thereto) between the Company and its Affiliates and RRSC related to the preparation for, and negotiation and consummation of, the transactions contemplated by this Agreement are hereby assigned and transferred as of immediately prior to the Closing to Emily Praxhia, as authorized representative of the Company (the "Authorized Representative"), (ii) the Company and its Affiliates hereby release all of their respective rights and interests to and in such communications and related materials and (iii) the Company and its Affiliates hereby release any right to assert or waive any privilege related to the communications referenced in this Section 22 and the Company and its Subsidiaries acknowledge and agree that all such rights shall reside with the Authorized Representative.

[Signature Page Follows]

COMPANY:

TRIGROW SYSTEMS, INC.

By: _____
Name:
Title:

PURCHASER:

AGRIFY CORPORATION

By: _____
Name:
Title:

MERGER SUB:

AGRIFY MERGER SUB, INC.

By: _____
Name:
Title:

STOCKHOLDERS' REPRESENTATIVE

_____
Christopher J. Graham

Schedule A:	Final Merger Consideration Spreadsheet
Schedule B:	Liquidity Event Adjustment

Exhibit A:	Articles of Merger
Exhibit B:	Amended and Restated Articles of Incorporation
Exhibit C:	Letter of Transmittal
Exhibit D:	Stockholder Questionnaire
Exhibit E:	Stockholders' Agreement Joinder
Exhibit F:	Merger Agreement Joinder

040105

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Articles of Incorporation
(PURSUANT TO NRS CHAPTER 78)

Filed in the office of	Document Number
Barbara K. Cegavske	20160254787-22
Secretary of State	Filing Date and Time
State of Nevada	06/06/2016 11:06 AM
	Entity Number
	E0254042016-2

(This document was filed electronically.)

USE BLACK INK ONLY - DO NOT HIGHLIGHT — ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Corporation:
AGRINAMICS, INC.

2. Registered Agent for Service of Process: (check only one box)
[X] Commercial Registered Agent: NEVADA DISCOUNT REGISTERED AGENT, INC. (Name)
[ ] Noncommercial Registered Agent (name and address below) *OR* [ ] Office or Position with Entity (name and address below)
Name of Noncommercial Registered Agent **OR** Name of Title of Office or Other Position with Entity
Street Address | City | Nevada | Zip Code
Mailing Address (if different from street address) | City | Nevada | Zip Code

3. Authorized Stock: (number of shares corporation is authorized to issue)
Number of shares *with par value:* 1 — Par value per share: $ 1.0 — Number of shares *without par value:* 0

4. Names and Addresses of the Board of Directors/Trustees: (each Director/Trustee must be a natural person at least 18 years of age; attach additional page if more than two directors/trustees)
1) MATT D LIOTTA (Name)
1579 MONROE DR NE #F-147 | ATLANTA | GA | 30324 (Street Address | City | State | Zip Code)
2) (Name)
Street Address | City | State | Zip Code

5. Purpose: (optional; required only if Benefit Corporation status selected)
The purpose of the corporation shall be:
ANY LEGAL PURPOSE

6. Benefit Corporation: (see instructions)
[ ] Yes

7. Name, Address and Signature of Incorporator: (attach additional page if more than one incorporator)
I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.
JENNIFER R LIOTTA (Name)
X JENNIFER R LIOTTA (Incorporator Signature)
1579 MONROE DR NE #F-147 | ATLANTA | GA | 30324 (Address | City | State | Zip Code)

8. Certificate of Acceptance of Appointment of Registered Agent:
I hereby accept appointment as Registered Agent for the above named Entity.
X NEVADA DISCOUNT REGISTERED AGENT, INC. (Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity)
6/6/2016 (Date)

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

090303

Certificate of Change Pursuant to NRS 78.209

Filed in the office of Barbara K. Cegavske Secretary of State State of Nevada	Document Number 20190224769-32 Filing Date and Time 05/24/2019 10:39 AM Entity Number E0254042016-2

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Certificate of Change filed Pursuant to NRS 78.209
For Nevada Profit Corporations

1. Name of corporation:

Agrinamics, Inc.

2. The board of directors have adopted a resolution pursuant to NRS 78.209 and have obtained any required approval of the stockholders.

3. The current number of authorized shares and the par value, if any, of each class or series, if any, of shares before the change:

1 share of common stock, par value $1.00 per share.

4. The number of authorized shares and the par value, if any, of each class or series, if any, of shares after the change:

6,500,000 shares of common stock, no par value.

5. The number of shares of each affected class or series, if any, to be issued after the change in exchange for each issued share of the same class or series:

3,680,000 shares of common stock, no par value.

6. The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby:

Not applicable.

7. Effective date and time of filing: (optional) Date: Time:

(must not be later than 90 days after the certificate is filed)

8. Signature: (required)

X _____ President

Signature of Officer Title

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Stock Split
Revised: 1-5-15

Filed in the Office of	Business Number
Barbara K. Cegavske	E0254042016-2
	Filing Number
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Secretary	Filed On
State Of Nevada	9/16/2019 10:00:00 AM
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	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:

Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

TYPE OR PRINT - USE DARK INK ONLY - DO NOT HIGHLIGHT

1. Entity information:

Name of entity as on file with the Nevada Secretary of State:

Agrinamics, Inc.

Entity or Nevada Business Identification Number (NVID): NV20161331161

2. Restated or Amended and Restated Articles: (Select one)

(If amending and restating only, complete section 1,2 3, 5 and 6)

☐ Certificate to Accompany Restated Articles or Amended and Restated Articles

☐ Restated Articles - No amendments; articles are restated only and are signed by an officer of the corporation who has been authorized to execute the certificate by resolution of the board of directors adopted on:
The certificate correctly sets forth the text of the articles or certificate as amended to the date of the certificate.

☐ Amended and Restated Articles

* Restated or Amended and Restated Articles must be included with this filing type.

3. Type of Amendment Filing Being Completed: (Select only one box)

(If amending, complete section 1, 3, 5 and 6.)

☐ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.380 - Before Issuance of Stock)

The undersigned declare that they constitute at least two-thirds of the following:

(Check only one box) ☐ incorporators ☐ board of directors

The undersigned affirmatively declare that to the date of this certificate, no stock of the corporation has been issued

☒ Certificate of Amendment to Articles of Incorporation (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: 100%

Officer's Statement (foreign qualified entities only) -

Name in home state, if using a modified name in Nevada:

Jurisdiction of formation:

Changes to takes the following effect:

☐ The entity name has been amended.
☐ The purpose of the entity has been amended.
☐ The authorized shares have been amended.
☐ Other: (specify changes)

☐ Dissolution
☐ Merger
☐ Conversion

* Officer's Statement must be submitted with either a certified copy of or a certificate evidencing the filing of any document, amendatory or otherwise, relating to the original articles in the place of the corporations creation.

This form must be accompanied by appropriate fees.

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Profit Corporation:
Certificate of Amendment (PURSUANT TO NRS 78.380 & 78.385/78.390)
Certificate to Accompany Restated Articles or Amended and Restated Articles (PURSUANT TO NRS 78.403)
Officer's Statement (PURSUANT TO NRS 80.030)

4. Effective Date and Time: (Optional)

Date: Time:

(must not be later than 90 days after the certificate is filed)

5. Information Being Changed: (Domestic corporations only)

Changes to takes the following effect:

- [x] The entity name has been amended.
- [ ] The registered agent has been changed. (attach Certificate of Acceptance from new registered agent)
- [ ] The purpose of the entity has been amended.
- [ ] The authorized shares have been amended.
- [ ] The directors, managers or general partners have been amended.
- [ ] IRS tax language has been added.
- [ ] Articles have been added.
- [ ] Articles have been deleted.
- [ ] Other.

The articles have been amended as follows: (provide article numbers, if available)

Agrify Corporation

(attach additional page(s) if necessary)

6. Signature: (Required)

X _____ Treasurer
Signature of Officer or Authorized Signer — Title

X _____
Signature of Officer or Authorized Signer — Title

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

Please include any required or optional information in space below:
(attach additional page(s) if necessary)

This form must be accompanied by appropriate fees.

Filed in the Office of	Business Number
Barbara K. Cegavske	E0254042016-2
	Filing Number
	20200401780
Secretary of State	Filed On
State Of Nevada	1/7/2020 8:49:00 AM
	Number of Pages
	2

BARBARA K. CEGAVSKE
Secretary of State
202 North Carson Street
Carson City, Nevada 89701-4201
(775) 684-5708
Website: www.nvsos.gov

Certificate of Amendment
(PURSUANT TO NRS 78.385 AND 78.390)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Incorporation For Nevada Profit Corporations
(Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

1. Name of corporation:
Agrify Corporation

2. The articles have been amended as follows: (provide article numbers, if available)
ARTICLE 3 (CAPITAL STOCK); has been amended in its entirety to read as set forth in the attached document and the following additional Article 6 has been added to the Articles:
The personal liability of the directors and officers of the Corporation is hereby eliminated to the fullest extent permitted by the NRS, as the same may be amended and supplemented hereafter. The Corporation is authorized to provide indemnification to the directors, officers and agents of the Corporation to the fullest extent permitted by the NRS, the same may be amended and supplemented hereafter. Any amendment, modification or repeal of this Article 6 shall not adversely affect any right or protection afforded to any director, officer or agent of the Corporation existing at the time of such amendment, modification or repeal.

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: 100%

4. Effective date and time of filing: (optional) Date: Time:
(must not be later than 90 days after the certificate is filed)

5. Signature: (required)

X _____
Signature of Officer

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

APPENDIX TO CERTIFICATE OF AMENDMENT.

ARTICLE 3

Authorized Capital Stock. The total number of shares of stock that the Corporation shall have authority to issue is 53 million, consisting of: 50 million shares of Common Stock, par value $0.001 per share ("Common Stock") and 3 million shares of Preferred Stock, par value $0.001 per share ("Preferred Stock"). The Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors and included in the certificate required by Section 78.1955 of the Nevada Revised Statutes ("NRS") for the issue of such series (a "Preferred Stock Designation") and as may otherwise be permitted by the NRS. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

Exhibit 3.2

SECOND AMENDED AND RESTATED CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS
OF
SERIES A CONVERTIBLE PREFERRED STOCK
OF
AGRIFY CORPORATION

Pursuant to Section 78.1955 of the Nevada Revised Statutes of the State of Nevada:

The undersigned, the Chairman of the Board of Directors (the "Board of Directors") of Agrify Corporation., a corporation organized and existing under the Nevada Revised Statutes of the State of Nevada in accordance with the provisions of Section 78 thereof (hereinafter called the "Company"), DOES HEREBY CERTIFY that the following resolutions were duly adopted by the Board of Directors of the Company on November 5, 2020:

WHEREAS, the Company's Articles of Incorporation authorizes 3,000,000 shares of preferred stock, $0.001 par value per share, issuable from time to time in one or more series (the "Preferred Stock"); and

WHEREAS, the Company's Articles of Incorporation authorizes the Board of Directors to provide by resolution for the issuance of shares of preferred stock in one or more series, and to fix for each such series such preferences, rights and power as may be permitted by the Nevada Revised Statutes; and

WHEREAS, the Company previously filed with the Nevada Secretary of State a Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock on January 9, 2020 (the "Certificate of Designation"), which was amended and restated in its entirety by the Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock previously filed with the Nevada Secretary of State on March 19, 2020 (the "Amended and Restated Certificate of Designation"); and

WHEREAS, it is the desire of the Board of Directors to further amend the terms of the Series A Preferred Stock (subject to the requisite approval of the holders of the Company's capital stock).

NOW THEREFORE, BE IT RESOLVED, that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of its Articles of Incorporation, the Amended and Restated Certificate of Designation be further amended and restated in its entirety pursuant to this Second Amended and Restated Certificate of Designation, and the terms of the Series A Convertible Preferred Stock of the Company be and hereby are amended and restated in their entirety, and that the designation and amount thereof and the powers, preferences and relative, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof as so amended and restated are as follows:

Section 1. Designation and Amount.

The designation of such series of Preferred Stock shall be "Series A Convertible Preferred Stock," $0.001 par value per share ("Series A Preferred Stock"). The maximum number of shares of Series A Preferred Stock shall be 105,000.

Section 2. Ranking.

The shares of Series A Preferred Stock shall be senior to any shares of the common stock of the Company, par value $0.001 per share (the "Common Stock"), and each other class or series of capital stock of the Company hereafter created (together with the Common Stock, the "Junior Stock"), in each case as to the payment of dividends and the distribution upon a liquidation, winding-up and dissolution of the Company.

Section 3. Dividends and Distributions.

(A) Holders of shares of Series A Preferred Stock shall be entitled to receive, in preference to any dividend paid on or declared and set aside for any Junior Stock, dividends at a per share price equal to the Series A Original Issue Price at an annual rate equal to 7% (the "Preferred Dividend Rate"), compounded annually. Such dividends shall be declared and paid out of Earnings Per Share legally available to pay such dividends, any unpaid dividends shall cumulate and be payable upon conversion in accordance with Section 6 hereof.

(B) If the Company declares, pays or sets apart for payment any dividend or makes any Distribution (as defined below) on any shares of Common Stock, then at the time of such dividend or Distribution the Company shall simultaneously pay a dividend or Distribution on each outstanding share of Series A Preferred Stock in an amount equal to the product of (i) the dividend or Distribution payable on each share of Common Stock multiplied by (ii) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock (without taking into account any limitations or restrictions on the convertibility of the shares of Series A Preferred Stock), calculated on the record date for determination of holders entitled to receive such dividend or Distribution. No dividend or other Distribution shall be declared or paid on any Junior Stock other than Common Stock.

Section 4. Voting Rights.

The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) The holders of outstanding shares of Series A Preferred Stock shall be entitled to notice of all meetings of stockholders in accordance with the Company's By-laws. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series A Preferred Stock shall be entitled to cast the number of votes, rounded down to the nearest whole number, equal to the number of votes that would be attributable to the shares of Common Stock issuable upon conversion of such shares of Series A Preferred Stock, assuming such conversion took place on the record date for determining the stockholders entitled to vote on such matter (without taking into account any limitations or restrictions on the convertibility of the shares of Series A Preferred Stock) and at the Conversion Price of Series A Preferred Stock in effect on such record date. Except as provided herein or by law, holders of outstanding shares of Series A Preferred Stock shall vote together with the holders of outstanding shares of Common Stock as a single class.

(B) Except as set forth herein, in the Articles of Incorporation or required by law, holders of shares of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 5. Liquidation Preference.

(A) In the event of the liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary (a "Liquidation"), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of shares of Common Stock or any other Junior Stock by reason of their ownership thereof, with respect to each share of Series A Preferred Stock an amount equal to the Series A Original Issue Price (as defined below) plus all accrued and unpaid dividends (the amount payable to the holders of shares of Series A Preferred Stock is hereinafter referred to as the "Series A Liquidation Amount"). If upon any such Liquidation, the assets of the Company available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full liquidation preference (including, with respect to the shares of Series A Preferred Stock, the Series A Liquidation Amount) to which they shall be entitled under this Section 5(A), the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. All payments for which this Section 5(A) provides shall be in cash, property or a combination thereof; *provided, however,* that no cash shall be paid to holders of shares of Common Stock or any other Junior Stock unless each holder of the outstanding shares of Series A Preferred Stock has been paid in cash the full amount to which such holder shall be entitled under this Section 5(A). After payment of the full Series A Liquidation Amount, such holders of shares of Series A Preferred Stock will not be entitled to any further participation as such in any distribution of the assets of the Company. The "Series A Original Issue Price" shall be $100 per share of Series A Preferred Stock.

(B) For purposes hereof, any transaction or series of related transactions that constitute (i) the sale, conveyance, exchange, lease or other transfer of all or substantially all of the assets of the Group taken as a whole, (ii) any acquisition of the Company by means of a consolidation, stock exchange, stock sale, merger or other form of corporate reorganization of the Company with any other entity in which the Company's stockholders prior to the consolidation or merger own less than a majority of the voting securities or economic interests of the surviving entity (or, if the surviving entity is a wholly-owned subsidiary of another corporation following such merger or consolidation, the parent corporation of such surviving entity), (iii) the sale or disposition (including by way of merger, consolidation or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale or disposition is to a wholly-owned subsidiary of the Company or (iv) a transaction or series of related transactions following which the Company's stockholders prior to such transaction or series of related transactions own less than a majority of the voting securities or economic interests of the Company or surviving entity (or, if the surviving entity is a wholly-owned subsidiary of another corporation following such transaction or series of related transactions, the parent corporation of such surviving entity) (any such event, a "Reorganization Event") shall be deemed to be a Liquidation unless otherwise determined by the holders of at least a majority of the shares of Series A Preferred Stock then outstanding. Notwithstanding the foregoing, any merger or reorganization exclusively between the Company and a wholly-owned subsidiary of the Company shall not be deemed to be a Reorganization Event.

(C) The Company shall not have the power to effect any transaction constituting a Reorganization Event pursuant to Section 5(B) above unless the agreement or plan of merger or consolidation provides that the consideration payable to the stockholders of the Company shall be allocated among the holders of capital stock of the Company in accordance with Section 5(A) above.

(D) Unless otherwise waived by the holders of at least a majority of the shares of Series A Preferred Stock then outstanding, the Company shall deliver a written notice of any Liquidation, stating a payment date and the place where the distributable amounts shall be payable by mail, postage prepaid, no less than ten (10) days prior to the payment date stated therein, to the holders of record of the shares of Series A Preferred Stock then outstanding at their respective addresses as the same shall appear on the books of the Company.

Section 6. Conversion.

The holder of shares of Series A Preferred Stock shall have the following conversion rights (the "Conversion Rights"):

(A) *Holder's Right to Convert.* At any time after issuance, each holder of any shares of Series A Preferred Stock then outstanding may, at such holder's option, elect to convert (a "Voluntary Conversion") all or any portion of the shares of Series A Preferred Stock held by such holder into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the product of (x) the Series A Original Issue Price plus an amount equal to any declared and unpaid dividends on the shares of Series A Preferred Stock being converted prior to the Voluntary Conversion Date (as defined below) plus the accrued but unpaid dividends payable under Section 3(A), multiplied by (y) the number of shares of Series A Preferred Stock being converted *divided by* (ii) the Conversion Price (as defined below) then in effect as of the date of the delivery by such holder of its notice of election to convert.

(B) *Mechanics of Voluntary Conversion.* The Voluntary Conversion of shares of Series A Preferred Stock shall be conducted in the following manner:

(i) *Holder's Delivery Requirements.* To convert shares of Series A Preferred Stock into full shares of Common Stock on any date (the "Voluntary Conversion Date"), the holder thereof shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 5:00 p.m., New York time on such date, a copy of a fully executed and completed notice of conversion in the form attached hereto as Exhibit A (the "Conversion Notice"), to the Company, and (B) surrender to a common carrier for delivery to the Company as soon as practicable following such Voluntary Conversion Date but in no event later than three (3) Business Days (as defined below) after such date the original certificates representing the shares of Series A Preferred Stock being converted (or an indemnification undertaking with respect to such certificates in the case of their loss, theft or destruction) (the "Preferred Stock Certificates") and the originally executed Conversion Notice.

(ii) *Company's Response.* Upon receipt by the Company of a facsimile copy of a Conversion Notice, the Company shall within three (3) Business Days send, via facsimile, a confirmation of receipt of such Conversion Notice to such holder. Upon receipt by the Company of an originally executed Conversion Notice, the Company or its designated transfer agent (the "Transfer Agent"), as applicable, shall, within three (3) Business Days following the date of receipt by the Company of the originally executed Conversion Notice (so long as the applicable Preferred Stock Certificates and original Conversion Notice are received by the Company on or before the third (3rd) Business Day), issue and deliver to the Depository Trust Company ("DTC") account on the holder's behalf via the Deposit Withdrawal Agent Commission System ("DWAC") as specified in the Conversion Notice, registered in the name of the holder or its designee, for the number of shares of Common Stock to which the holder shall be entitled. Notwithstanding the foregoing to the contrary, the Company or the Transfer Agent shall only be required to issue and deliver the shares to the DTC on a holder's behalf via DWAC if such conversion is in connection with a sale and all requirements to effect such DWAC have been met, including, but not limited to, such shares being registered for resale pursuant to an effective registration statement and satisfaction of applicable prospectus delivery requirements, if any. If the Company or the Transfer Agent cannot issue the shares to a holder via DWAC because the aforementioned conditions are not satisfied, the Company shall deliver physical certificates to the holder or its designee. If the number of shares of Series A Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series A Preferred Stock being converted, then the Company shall, as soon as practicable, issue and deliver to the holder a new Preferred Stock Certificate representing the number of shares of Series A Preferred Stock not converted.

(iii) *Record Holder.* The person or persons entitled to receive the shares of Common Stock issuable upon a Voluntary Conversion of Series A Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Voluntary Conversion Date.

(C) *Automatic Conversion*.

(i) Immediately prior to the consummation of an Automatic Conversion Event (the date on which such Automatic Conversion Event is effected is referred to herein as the "Mandatory Conversion Date"), each share of Series A Preferred Stock shall automatically be converted into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the aggregate of (x) the Series A Original Issue Price plus (y) an amount equal to any declared and unpaid dividends on such share of Series A Preferred Stock prior to the Mandatory Conversion Date *divided by* (ii) the Automatic Conversion Price (as defined below).

Any conversion pursuant to this Section 6(C)(i) shall be referred to as an "Automatic Conversion."

(ii) On the Mandatory Conversion Date, the shares of Series A Preferred Stock shall be *converted* automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its Transfer Agent, and certificates previously representing shares of Series A Preferred Stock shall represent only the shares of Common Stock into which the shares of Series A Preferred Stock previously represented thereby have been converted pursuant hereto; *provided, however,* that the Company shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series A Preferred Stock unless certificates evidencing such shares of Series A Preferred Stock are either delivered to the Company or the holder notifies the Company that such certificates have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of shares of Series A Preferred Stock pursuant to this Section 6(C), the holders of shares of Series A Preferred Stock shall surrender the certificates representing such shares to the Company and the Company shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6(B)(ii)) to the holder within three (3) Business Days of the holder's delivery of the applicable Series A Preferred Stock certificates.

(iii) *Record Holder.* The person or persons entitled to receive the shares of Common Stock issuable upon a conversion of Series A Preferred Stock effected by the Automatic Conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Mandatory Conversion Date.

(D) *Conversion Price.*

(i) The per share "Conversion Price" shall mean $7.43 (which is $70 million divided by 9,420,288 shares), subject to subsequent adjustment under Section 6(E) hereof.

(ii) The per share "Automatic Conversion Price" shall mean a price equal to the quotient of (A) the *lesser* of (x) $70 million and (y) 70% of the Aggregate Valuation (as defined below) of the Company on the Mandatory Conversion Date *divided by* (B) the number of total outstanding shares of Common Stock immediately prior to the consummation of the Automatic Conversion Event. For the purposes of this Subsection 6(D)(ii), all shares of Common Stock issuable upon conversion of all outstanding shares of Series A Preferred Stock at the Conversion Price and upon the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options at their then respective exercise or conversion prices shall be deemed to be outstanding.

(iii) For the purposes of Subsection 6(D)(ii) above, "Aggregate Valuation" means the product of (A) the price per share of Common Stock issued or received in connection with the Automatic Conversion Event (by way of example, the price per share of Common Stock offered to the public in an IPO (as defined in the definition of Automatic Conversion Event herein) or the price per share of Common Stock received by the Company or its shareholders in reverse merger or similar transaction), *multiplied by* (B) the sum of (x) the number of total outstanding shares of Common Stock immediately prior to the consummation of the Automatic Conversion Event, plus (y) the total number of shares of Common Stock issuable upon conversion of all outstanding shares of Series A Preferred Stock at the Conversion Price and upon the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options at their then respective exercise or conversion prices.

(E) *Adjustments of Conversion Price*.

(i) *Adjustments for Stock Splits and Combinations.* If the Company shall at any time or from time to time after the Issuance Date, effect a stock split of the outstanding shares of Common Stock, the Conversion Price shall be proportionately decreased. For example, a 2:1 stock split shall result in a decrease in the Conversion Price by ½, taking into account all prior adjustments made thereto under this Section 6(E). If the Company shall at any time or from time to time after the Issuance Date, combine the outstanding shares of Common Stock, the Conversion Price shall be proportionately increased. For example, a 1:2 combination shall result in an increase in the Conversion Price by a multiple of 2, taking into account all prior adjustments made thereto under this Section 6(E). Any adjustments under this Section 6(E)(i) shall be effective at the close of business on the date the stock split or combination becomes effective.

(ii) *Adjustments for Dividends and Distributions of Common Stock.* If the Company shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the Conversion Price shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(iii) *Adjustment for Merger or Reorganization, etc.* If at any time or from time to time after the Issuance Date there shall occur any reorganization, recapitalization, reclassification, consolidation, merger or other reorganization event (collectively, the "Reorganization Adjustment Event") involving the Company (other than a Reorganization Event deemed to be a Liquidation pursuant to Section 5(B) or an Automatic Conversion Event) in which shares of Common Stock (but not shares of Series A Preferred Stock) are converted into or exchanged for securities, cash or other property (other than a transaction covered by Section 6(E)(i) or Section 6(E)(ii)), then, following any such Reorganization Adjustment Event, each share of Series A Preferred Stock shall thereafter be convertible (without taking into account any limitations or restrictions on the convertibility of the shares of Series A Preferred Stock), in lieu of the shares of Common Stock, into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Company issuable upon conversion of one share of Series A Preferred Stock immediately prior to such Reorganization Adjustment Event would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 6(E) with respect to the rights and interests thereafter of the holders of shares of Series A Preferred Stock, to the end that the provisions set forth in this Section 6 (including provisions with respect to changes in and other adjustments to the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the shares of Series A Preferred Stock.

(iv) *Adjustment for Delay in Automatic Conversion Event/Minimum Revenue Target.* Upon conversion of any shares of Series A Preferred Stock subsequent to January 1, 2021, if (A) an Automatic Conversion Event did not occur by December 31, 2020, and (B) the Company's revenue for fiscal year 2020 in accordance with GAAP based upon the Company's financial statements was lower than $45 million, the Conversion Price then in effect shall be adjusted in accordance with the following formula:

P2 = P1 x 85%

where,

P1 = the Conversion Price in effect immediately prior to such adjustment; and

P2 = the Conversion Price in effect immediately upon such adjustment.

(v) *Successive Adjustments; Multiple Adjustments*. After an adjustment is made to the Conversion Price under this Section 6*,* any subsequent event requiring an adjustment under this Section 6 shall cause an adjustment to such Conversion Price, as so adjusted.

(F) *Certificates as to Adjustments.* Upon occurrence of each adjustment or readjustment of the Conversion Price, or number of shares of Common Stock issuable upon shares of conversion of Series A Preferred Stock pursuant to this Section 6*,* the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such shares of Series A Preferred Stock a certificate setting forth such adjustment and readjustment, showing in detail the facts upon which such adjustment or readjustment is based, assuming conversion of shares of Series A Preferred Stock. The Company shall, upon written request of the holder of any such affected shares of Series A Preferred Stock, at any time, furnish or cause to be furnished to such holder a like certificate setting forth such adjustments and readjustments, the Conversion Price in effect at the time, and the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon the conversion of a share of such Series A Preferred Stock.

(G) *Fractional Shares.* No fractional shares of Common Stock shall be issued upon conversion of the shares of Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Company shall pay to such holder cash equal to the fair market value of such fractional share as determined by the Board of Directors.

(H) *Reservation of Common Stock.* The Company shall, so long as any shares of Series A Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of Series A Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of Series A Preferred Stock then outstanding.

(I) *Partial Conversion of Series A Preferred Stock.* Conversion of shares of Series A Preferred Stock shall be deemed to have been effected on the Voluntary Conversion Date or the Mandatory Conversion Date, as applicable, and such date is referred to herein as the "Conversion Date." Upon conversion of only a portion of the number of shares of Series A Preferred Stock represented by a certificate surrendered for conversion, the Company shall issue and deliver to such holder at the expense of the Company, a new certificate covering the number of shares of Series A Preferred Stock representing the unconverted portion of the shares of Series A Preferred Stock so surrendered.

Section 7. Retirement of Reacquired Shares.

Any shares of Series A Preferred Stock purchased, converted or otherwise acquired by the Company in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein, but may not be reissued as shares of Series A Preferred Stock.

Section 8. Lost or Stolen Certificates.

Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any certificates representing the shares of Series A Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder of such shares of Series A Preferred Stock to the Company in customary form and, in the case of mutilation, upon surrender and cancellation such certificates, the Company shall execute and deliver new preferred stock certificate(s) of like tenor and date; *provided*, *however*, the Company shall not be obligated to re-issue certificates of such shares of Series A Preferred Stock if the holder contemporaneously requests the Company to convert such shares of Series A Preferred Stock into shares of Common Stock.

Section 9. Injunctive Relief.

The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of shares of Series A Preferred Stock and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

Section 10. Failure or Indulgence Not Waiver.

No failure or delay on the part of a holder of shares of Series A Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

Section 11. Transfer of Shares.

A holder of shares of Series A Preferred Stock may assign some or all of the shares and the accompanying rights hereunder held by such holder without the consent of the Company; provided that such assignment is in compliance with applicable securities laws.

Section 12. Preferred Share Register.

The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to the holders of shares of Series A Preferred Stock), a register for Series A Preferred Stock, in which the Company shall record the name and address of the persons in whose name Series A Preferred Stock have been issued, as well as the name and address of each transferee. The Company may treat the person in whose name any of Series A Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

Section 13. Stockholder Matters.

Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the rules and regulations of the applicable stock market, the Nevada Revised Statutes, this Amended and Restated Certificate of Designation or otherwise with respect to the issuance of shares of Series A Preferred Stock or the common stock Series A Preferred Stock may convert into may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the applicable stock market and the Nevada Revised Statutes. This provision is intended to comply with the applicable sections of the Nevada Revised Statutes permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

Section 14. Definitions.

"Actual Net Income" means, in respect of any fiscal year or quarter, the consolidated net income of the Company for such fiscal year or quarter (as applicable), in accordance with GAAP based upon the Company's financial statements for the relevant period.

"Automatic Conversion Event" shall mean: (i) the Company or its successor in interest (a) becoming a reporting issuer in the United States under applicable United States securities laws through either the filing of a prospectus or registration statement or a merger, business combination or similar transaction with an existing reporting issuer or the equivalent, and (b) the Common Stock or the common stock of such existing reporting issuer resulting from such a transaction is listed for trading on any tier of the NASDAQ Stock Market, The New York Stock Exchange, the NYSE American or similar nationally recognized stock exchange (a "National Exchange"), or (ii) upon the consummation of an underwritten public offering of the Common Stock of gross proceeds to the Company of at least $20 million and its Common Stock is listed on a National Exchange (an "IPO").

"Business Day" means any day except Saturday, Sunday and any day which shall be a United States federal or a day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Convertible Securities" shall mean any evidences of indebtedness, shares or other securities convertible into or exchangeable for Common Stock.

"Distribution" means the transfer of cash or other property without consideration, whether by way of dividend or otherwise or the purchase or redemption of shares of the Company for cash or property.

"Earnings Per Share" in respect of any quarter means the quotient of the Actual Net Income of such quarter divided by the total number of shares of Common Stock outstanding as of the last day of such quarter assuming all shares of Series A Preferred Stock and other Equity Securities convertible into or exercisable or exchangeable for Common Stock have been so converted, exercised or exchanged.

"Issuance Date" means the date of original issuance of shares Series A Preferred Stock.

"Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed and subscribed this Second Amended and Restated Certificate and does affirm the foregoing as true under the penalties of perjury this 9th day of November, 2020.

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chief Executive Officer

EXHIBIT A

AGRIFY CORPORATION
CONVERSION NOTICE

Reference is made to the Second Amended and Restated Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock of Agrify Corporation (the "Certificate of Designation"). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, each with a par value of $0.001 per share (the "Preferred Shares"), of Agrify Corporation, a Nevada corporation (the "Company"), indicated below into shares of Common Stock, par value $0.001 per share (the "Common Stock"), of the Company, by tendering the stock certificate(s) representing the share(s) of Preferred Shares specified below as of the date specified below.

Date of Conversion:

Number of Preferred Shares to be converted:

Stock certificate no(s). of Preferred Shares to be converted:

Please confirm the following information:

Conversion Price:

Number of shares of Common Stock to be issued:

Please issue the Common Stock into which the Preferred Shares are being converted and, if applicable, any check drawn on an account of the Company in the following name and to the following address:

Issue to:
Facsimile Number:
Authorization:

By: _____
Name:
Title:

Dated:

Exhibit 4.3

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY.

COMMON STOCK PURCHASE WARRANT

AGRIFY CORPORATION

Warrant Shares: [_____] Initial Exercise Date: [_____], 2020
Warrant No. [____]

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, [_____] or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to [_____], 2025 (the "Termination Date"), but not thereafter, to subscribe for and purchase from Agrify Corporation, a Nevada corporation (the "Company"), up to [_____] shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price (as defined in Section 2(c) hereof).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Note and Warrant Purchase Agreement (the "Purchase Agreement"), dated [_____], 2020 among the Company and the purchasers signatory thereto. The following definitions shall apply for purposes of this Warrant:

(a) "Business Day" means any day except Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

(b) "Trading Day" means a day on which the principal Trading Market is open for trading; provided, that in the event that the Common Stock is not listed or quoted on a Trading Market, then Trading Day shall mean a Business Day.

(c) "Trading Market" means whichever of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, the OTC Bulletin Board or any tier of the OTC Markets Group, Inc. (or any successors to any of the foregoing).

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy of the Notice of Exercise form annexed hereto and within five (5) Trading Days of the date said Notice of Exercise is delivered to the Company, the Company shall have received payment of the aggregate Exercise Price of the shares thereby purchased payable at the Holder's election (i) by certified or official bank check or by wire transfer to an account designated by the Company, or (ii) by "cashless exercise" in accordance with the provisions of subsection (b) below. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall use its commercially reasonable efforts to deliver any objection to any Notice of Exercise Form within two (2) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Cashless Exercise. Notwithstanding any provision herein to the contrary, commencing six (6) months from the Initial Exercise Date, if the Per Share Market Value (as defined below) of one share of Common Stock is greater than the Exercise Price (at the date of calculation as set forth below) and there is not an effective registration statement under the Securities Act providing for the resale of the Warrant Shares, in lieu of exercising this Warrant by payment of cash, the Holder may exercise this Warrant by a cashless exercise by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise, in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = Y - \frac{(A)(Y)}{B}$$

Where X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares purchasable upon exercise of all of the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised.

A = the Exercise Price.

B = the Per Share Market Value of one share of Common Stock.

For purposes hereof, "Per Share Market Value" means (a) the average of the closing bid price per share of the Common Stock for the five (5) Trading Days preceding such date on the OTC Bulletin Board or another registered national stock exchange on which the Common Stock is then listed, or (b) if the Common Stock is not listed then on the OTC Bulletin Board or any registered national stock exchange, the closing bid price for a share of Common Stock for the five (5) Trading Days preceding such date in the over the counter market, as reported by the OTC Bulletin Board or by Pink OTC Markets Inc. or similar organization or agency succeeding to its functions of reporting prices) at the close of business on such dates, or (c) if the Common Stock is not then reported by the OTC Bulletin Board or by Pink OTC Markets Inc. (or similar organization or agency succeeding to its functions of reporting prices), then the average of the "Pink Sheet" quotes for the five (5) Trading Days preceding such date of determination, or (d) if the Common Stock is not then publicly traded the fair market value of a share of Common Stock as determined by the Company's board of directors.

(c) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be **$0.01**, subject to further adjustment hereunder pursuant to Section 3 (the "Exercise Price").

(d) Mechanics of Exercise.

(i) Delivery of Certificates Upon Exercise. Certificates for shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder and in connection with such issuance or resale such Warrant shares are sold by the Holder, and otherwise by physical delivery to the address specified by the Holder in the Notice of Exercise by the date that is five (5) Trading Days after the latest of (A) the delivery to the Company of the Notice of Exercise, (B) surrender of this Warrant (if required), and (C) payment of the aggregate Exercise Price as set forth above. The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such Warrant Shares, having been paid.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the certificate or certificates representing Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall round up to the next whole share.

(iv) Charges, Taxes and Expenses. The Company shall pay any and all issue and other taxes, excluding federal, state or local income taxes, that may be payable in respect of any issue or delivery of the Warrant Shares upon exercise of this Warrant; provided, however, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such exercise.

(v) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

(a) Adjustments for Stock Splits, Combinations, Certain Dividends and Distributions. If the Company shall, at any time or from time to time after the Initial Exercise Date, effect a split of the outstanding Common Stock (or any other subdivision of its shares of Common Stock into a larger number of shares of Common Stock), combine the outstanding shares of Common Stock into a smaller number of shares of Common Stock, or make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, in each event (i) the number of shares of Common Stock for which this Warrant shall be exercisable immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock that a record holder of the same number of shares of Common Stock for which this Warrant is exercisable immediately prior to the occurrence of such event would own or be entitled to receive after the happening of such event, and (ii) the Exercise Price then in effect shall be adjusted to equal (A) the Exercise Price then in effect multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (B) the number of shares of Common Stock for which this Warrant is exercisable immediately after such adjustment.

(b) Adjustment for Other Dividends and Distributions. If the Company shall, at any time or from time to time after the Initial Exercise Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in (i) cash, (ii) any evidences of indebtedness, or any other securities of the Company or any property of any nature whatsoever, other than, in each case, shares of Common Stock; or (iii) any warrants or other rights to subscribe for or purchase any evidences of indebtedness, or any other securities of the Company or any property of any nature whatsoever, other than, in each case, shares of Common Stock, then, and in each event, (A) the number of shares of Common Stock for which this Warrant shall be exercisable shall be adjusted to equal the product of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such adjustment multiplied by a fraction (1) the numerator of which shall be the last closing bid price per share of the Common Stock at the date of taking such record and (2) the denominator of which shall be such last closing bid price per share of the Common Stock minus the amount allocable to one share of Common Stock of any such cash so distributable and of the fair value (as determined in good faith by the Board) of any and all such evidences of indebtedness, shares of stock, other securities or property or warrants or other subscription or purchase rights so distributable, and (B) the Exercise Price then in effect shall be adjusted to equal (1) the Exercise Price then in effect multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (2) the number of shares of Common Stock for which this Warrant is exercisable immediately after such adjustment. A reclassification of the Common Stock (other than a change in par value, or from par value to no par value or from no par value to par value) into shares of Common Stock and shares of any other class of stock shall be deemed a distribution by the Company to the holders of its Common Stock of such shares of such other class of stock within the meaning of this Section 3(b) and, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock within the meaning of Section 3(a).

(c) Adjustments for Reclassification, Exchange or Substitution. If the Common Stock for which this Warrant is exercisable at any time or from time to time after the Initial Exercise Date shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Section 3(a), Section 3(b), or a reorganization, merger, consolidation, or sale of assets provided for in Section 3(d)), then, and in each event, an appropriate revision to the Exercise Price shall be made and provisions shall be made (by adjustments of the Exercise Price or otherwise) so that, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, in lieu of Warrant Stock, the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock for which this Warrant was exercisable immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(d) Adjustments for Reorganization, Merger, Consolidation or Sales of Assets. If at any time or from time to time after the Initial Exercise Date there shall be a capital reorganization of the Company (other than by way of a stock split or combination of shares or stock dividends or distributions provided for in Section 3(a), and Section 3(b), or a reclassification, exchange or substitution of shares provided for in Section 3(c)), or a merger or consolidation of the Company with or into another corporation where the holders of the Company's outstanding voting securities prior to such merger or consolidation do not own over 50% of the outstanding voting securities of the merged or consolidated entity, immediately after such merger or consolidation, or the sale of all or substantially all of the Company's properties or assets to any other person (an "Organic Change"), then as a part of such Organic Change an appropriate revision to the Exercise Price shall be made if necessary and provision shall be made if necessary (by adjustments of the Exercise Price or otherwise) so that, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, in lieu of Warrant Stock, the kind and amount of shares of stock and other securities or property of the Company or any successor corporation resulting from the Organic Change. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3(d) with respect to the rights of the Holder after the Organic Change to the end that the provisions of this Section 3(d) (including any adjustment in the Exercise Price then in effect and the number of shares of stock or other securities deliverable upon exercise of this Warrant) shall be applied after that event in as nearly an equivalent manner as may be practicable.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations reasonably requested in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be substantially identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the provisions of the Purchase Agreement and applicable securities laws.

(e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof except as expressly set forth herein.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant.

(e) Governing Law; Jurisdiction. This Warrant shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction. Each of the Company and the Holder (i) hereby irrevocably submits to the jurisdiction of the United States District Court sitting in the Southern District of New York and the courts of the State of New York located in New York county for the purposes of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Transaction Documents or the transactions contemplated hereby or thereby and (ii) hereby waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date.

(h) Notices. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with the terms of the Purchase Agreement.

(i) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(j) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the prior written consent of the Company and the holders of a majority of the then outstanding warrants issued pursuant to the Purchase Agreement.

(k) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(l) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

AGRIFY CORPORATION

By _____
Name: Raymond Chang
Title: Chief Executive Officer

WARRANT

NOTICE OF EXERCISE

To: AGRIFY CORPORATION

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Please issue a certificate or certificates representing said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of a certificate to:

_____

_____

_____

(3) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

(4) The undersigned intends that payment of the Exercise Price shall be made as (check one):

Cash Exercise_____

Cashless Exercise_____

If the Holder has elected a Cash Exercise, the Holder shall pay the sum of $_____ by certified or official bank check (or via wire transfer) to the Company in accordance with the terms of the Warrant.

If the Holder has elected a Cashless Exercise, a certificate shall be issued to the Holder for the number of shares equal to the whole number portion of the product of the calculation set forth below, which is _____.

$$X = Y - \frac{(A)(Y)}{B}$$

Where:

The number of shares of Common Stock to be issued to the Holder is ("X").

The number of shares of Common Stock purchasable upon exercise of all of the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being exercised is ("Y").

The Exercise Price is ("A").

The Per Share Market Value of one share of Common Stock is ("B").

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity:_____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [____ all of or [_____ shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

_____ whose address is

_____.

_____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

_____

Exhibit 10.1

OPERATING AGREEMENT

between/among

AGRIFY-VALIANT, LLC

and

THE MEMBERS NAMED HEREIN

dated as of

December 8, 2019

This Operating Agreement of Agrify-Valiant, LLC, a Massachusetts limited liability company (the "**Company**"), is entered into as of December 8, 2019 by and among the Company, the Initial Members executing this Agreement as of the date hereof and each other Person who after the date hereof becomes a Member of the Company and becomes a party to this Agreement by executing a Joinder Agreement.

RECITALS

WHEREAS, The parties desire to form Agrify-Valiant, LLC as a limited liability company under the laws of the State of Massachusetts and, to that end, have filed a Certificate of Organization for the Company with the Massachusetts Secretary of State (the "**Certificate of Organization**"); and

WHEREAS, The parties now desire to adopt an operating agreement to govern the respective rights and obligations as members of the Company.

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

ARTICLE I. DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.01:

"**Acceptance Notice**" has the meaning set forth in Section 9.01(d).

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) crediting to such Capital Account any amount which such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i); and

(b) debiting to such Capital Account the items described in Treasury Regulations Section 1.704- 1(b)(2)(ii)(d)(4), (5) and (6).

"**Affiliate**" means, with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

"**Agreement**" means this Operating Agreement, as executed and as it may be amended, modified, supplemented or restated from time to time, as provided herein.

"**Agrify**" means Agrify Corporation, a Nevada corporation.

"**Applicable Law**" means all Provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or Agreements with, any Governmental Authority.

"**Bankruptcy**" means, with respect to a Member, the occurrence of any of the following: (a) the filing of an application by such Member for, or a consent to, the appointment of a trustee of such Member's assets; (b) the filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member's inability to pay its debts as they come due; (c) the making by such Member of a general assignment for the benefit of such Member's creditors; (d) the filing by such Member of an answer admitting the material allegations of, or such Member's consenting to, or defaulting in answering a bankruptcy petition filed against such Member in any bankruptcy proceeding; or (e) the expiration of sixty (60) days following the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Member a bankrupt or appointing a trustee of such Member's assets.

"**BBA**" means the Bipartisan Budget Act of 2015.

"**Book Depreciation**" means, with respect to any Company asset for each Fiscal Year, the Company's depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such Fiscal Year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined with reference to such beginning Book Value using any permitted method selected by the Board in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

"**Book Value**" means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross Fair Market Value of such Company asset as of the date of such contribution;

(b) immediately prior to the Distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross Fair Market Value as of the date of such Distribution;

(c) the Book Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as determined by the Board, as of the following times:

(i) the acquisition of an additional Membership Interest in the Company by a new or existing Member in consideration of a Capital Contribution of more than a *de minimis* amount;

(ii) the Distribution by the Company to a Member of more than a *de minimis* amount of property (other than cash) as consideration for all or a part of such Member's Membership Interest in the Company; and

(iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704- 1(b)(2)(ii)(g);

provided, that an adjustment pursuant to clauses (i), (ii), or (iii) above need not be made if the Board reasonably determines that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Account balances pursuant to Treasury Regulations Section 1.704- 1(b)(2)(iv)(m); *provided*, that Book Values shall not be adjusted pursuant to this Section 1.01(d) to the extent that an adjustment pursuant to Section 1.01(c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this Section 1.01(d) ; and

(e) if the Book Value of a Company asset has been determined pursuant to Section 1.01(a) or adjusted pursuant to Section 1.01(c) orSection 1.01(d) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Losses.

"**Business Day**" means a day other than a Saturday, Sunday, or other day on which commercial banks in the City of New York are authorized or required to close.

"**Call Purchase Price**" means the Cause Purchase Price or Fair Market Value, as applicable pursuant to Section 10.06(a) .

"**Capital Contribution**" means, for any Member, the total amount of cash and cash equivalents and the Book Value of any property contributed to the Company by such Member.

"**Capital Value**" means, for any Unit at any time, the sum of the Capital Contributions attributable in respect of the acquisition of such Unit.

"**Certificate of Organization**" has the meaning set forth in the Recitals.

"**Change of Control**" means: (a) the sale of all or substantially all of the consolidated assets of the Company and the Company Subsidiaries to a Third Party Purchaser; (b) a sale resulting in no less than a majority of the Units on a Fully Diluted Basis being held by a Third Party Purchaser; or (c) a merger, consolidation, recapitalization, or reorganization of the Company with or into a Third Party Purchaser that results in the inability of the Members to designate or elect a majority of the Managers (or the board of directors (or its equivalent) of the resulting entity or its parent company).

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Common Pro Rata Portion**" means:

(a) for purposes of Section 9.01, with respect to any Pre-Emptive Member holding Units, on any issuance date for New Common Securities, a fraction determined by dividing (i) the number of Units on a Fully Diluted Basis owned by such Pre-Emptive Member immediately prior to such issuance by (ii) the total number of Units on a Fully Diluted Basis held by the Members on such date immediately prior to such issuance; and

(b) for purposes of Section 10.03, with respect to an ROFR Rightholder holding Units, on any date of a proposed Transfer by an Offering Member, a fraction determined by dividing (i) the number of Units on a Fully Diluted Basis owned by such ROFR Rightholder immediately prior to such Transfer by (ii) the total number of Units on a Fully Diluted Basis held by the Members on such date immediately prior to such Transfer.

"**Company Minimum Gain**" means "partnership minimum gain" as defined in Treasury Regulations Section 1.704-2(b)(2), substituting the term "Company" for the term "partnership" as the context requires.

"**Company Subsidiary**" means a Subsidiary of the Company.

"**Delay Condition**" means any of the following conditions: (a) a default has occurred under any Financing Document and is continuing.

"**Distribution**" means a distribution made by the Company to a Member, whether in cash, property, or securities of the Company and whether by liquidating distribution or otherwise; *provided*, that none of the following shall be a Distribution: (a) any redemption or repurchase by the Company or any Member of any Units; (b) any recapitalization or exchange of securities of the Company; (c) any subdivision (by a split of Units or otherwise) or any combination (by a reverse split of Units or otherwise) of any outstanding Units; or (d) any fees or remuneration paid to any Member in such Member's capacity as a service provider for the Company. "**Distribute**" when used as a verb shall have a correlative meaning.

"**Electronic Transmission**" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

"**Estimated Tax Amount**" of a Member for a Fiscal Year means the Member's Tax Amount for such Fiscal Year as estimated in good faith from time to time by the Board. In making such estimate, the Board shall take into account amounts shown on Internal Revenue Service Form 1065 filed by the Company and similar state or local forms filed by the Company for the preceding taxable year and such other adjustments as in the reasonable business judgment of the Board are necessary or appropriate to reflect the estimated operations of the Company for the Fiscal Year.

"**Fair Market Value**" of any asset as of any date means the purchase price that a willing buyer having all relevant knowledge would pay a willing seller for such asset in an arm's length transaction, as determined in good faith by the Board based on such factors as the Board, in the exercise of its reasonable business judgment, considers relevant.

"**Financing Document**" means any credit Agreement, guarantee, financing, or security Agreement or other Agreements or instruments governing indebtedness of the Company.

"**Fiscal Year**" means the calendar year, unless the Company is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year.

"**Fully Diluted Basis**" means, as of any date of determination, all issued and outstanding Units of the Company,

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

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

"**Initial Cost**" means, with respect to any Unit, the purchase price paid to the Company with respect to such Unit by the Member to whom such Unit was originally issued.

"**Initial Member**" means each Person identified as a Member as of the date hereof.

"**Joinder Agreement**" means the joinder agreement in form and substance attached hereto as Exhibit A.

"**Massachusetts Act**" means the Massachusetts Limited Liability Company Act, Massachusetts General Laws, Chapter 156C, §§ 1-72, et seq., and any successor statute, as it may be amended from time to time.

"**Member**" means (a) each Person identified on the Members Schedule as of the date hereof as a Member and who has executed this Agreement or a counterpart thereof (each, an "**Initial Member**"); and (b) and each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Massachusetts Act, in each case so long as such Person is shown on the Company's books and records as the owner of one or more Units. The Members shall constitute the "members" (as that term is defined in the Massachusetts Act) of the Company.

"**Membership Interest**" means an interest in the Company owned by a Member, including such Member's right, as applicable, (a) to a Distributive share of Net Income, Net Losses and other items of income, gain, loss and deduction of the Company; (b) to a Distributive share of the assets of the Company; (c) to vote on, consent to or otherwise participate in any decision of the Members as provided in this Agreement; and (d) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the Massachusetts Act.

"**Net Income**" and "**Net Loss**" mean, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company's taxable income or taxable loss, or particular items thereof, determined in accordance with Code Section 703(a)(where, for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or taxable loss), but with the following adjustments:

(a) any income realized by the Company that is exempt from federal income taxation, as described in Code Section 705(a)(1)(B), shall be added to such taxable income or taxable loss, notwithstanding that such income is not includable in gross income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B), including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) as items described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or taxable loss, notwithstanding that such expenditures are not deductible for federal income tax purposes;

(c) any gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property so disposed, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(d) any items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted tax basis shall be computed by reference to the property's Book Value (as adjusted for Book Depreciation) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

(e) if the Book Value of any Company property is adjusted as provided in the definition of Book Value, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of such taxable income or taxable loss; and

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704- 1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

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

"**Pro Rata Portion**" means:

(a) for purposes of Section 9.01, a Member's Pro Rata Portion of any New Securities proposed to be issued or sold by the Company; and

(b) for purposes of Section 10.03, a Member's Pro Rata Portion of any Offered Units proposed to be Transferred by an Offering Member.

(c) for purposes of Section 10.03, with respect to an ROFR Rightholder, on any date of a proposed Transfer by an Offering Member, a fraction determined by dividing (i) the number of Units on a Fully Diluted Basis owned by such ROFR Rightholder immediately prior to such Transfer by (ii) the total number of Units on a Fully Diluted Basis held by the Members on such date immediately prior to such Transfer.

"**Public Offering**" means any underwritten public offering pursuant to a registration statement filed in accordance with the Securities Act.

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

"**Securities Act**" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

"**Subsidiary**" means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

"**Tax Rate**" of a Member, for any period, means the highest marginal blended federal, state, and local tax rate applicable to ordinary income, qualified dividend income, or capital gains, as appropriate, for such period for an individual residing in New York, New York, taking into account for federal income tax purposes the deduction under IRC Section 199A.

"**Third Party Purchaser**" means any Person who, immediately prior to the contemplated transaction, (a) does not directly or indirectly own or have the right to acquire any outstanding Units or (b) is not a Permitted Transferee of any Person who directly or indirectly owns or has the right to acquire any Units.

"**Transfer**" means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate, or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option, or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation, or similar disposition of, any Units owned by a Person or any interest (including a beneficial interest) in any Units owned by a Person. "**Transfer**" when used as a noun shall have a correlative meaning. "**Transferor**" and "**Transferee**" mean a Person who makes or receives a Transfer, respectively.

"**Treasury Regulations**" means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

"**Unit**" means a unit representing a fractional part of the Membership Interests of the Members.

"**Unreturned Capital Value**" means, for any Unit at any time, the amount of the Capital Value for such Unit, reduced by the aggregate amount of all Distributions made by the Company in respect of such Unit pursuant to Section 7.02(b) prior to such time.

"**Valiant**" means Valiant America, LLC, a Massachusetts limited liability company.

Section 1.02 Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (y) to an Agreement, instrument or other document means such Agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

ARTICLE II. ORGANIZATION

Section 2.01 Formation.

(a) The Company was formed on December 12/10/2019, pursuant to the provisions of the Massachusetts Act, upon the filing of the Certificate of Organization with the Secretary of State of the State of Massachusetts.

(b) This Agreement shall constitute the "Operating Agreement" (as that term is used in the Massachusetts Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Massachusetts Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Massachusetts Act in the absence of such provision, this Agreement shall, to the extent permitted by the Massachusetts Act, control.

Section 2.02 Name. The name of the Company is "Agrify-Valiant, LLC" or such other name or names as the Board may from time to time designate; *provided*, that the name shall always contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC."

Section 2.03 Principal Office. The principal office of the Company is located at 101 Middlesex Turnpike, Ste 6 PMB 327, Burlington, MA 01803, or such other place as may from time to time be determined by the Board. The Board shall give prompt notice of any such change to each of the Members.

Section 2.04 Registered Office; Registered Agent.

(a) The registered office of the Company shall be the office of the initial registered agent named in the Certificate of Organization or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by the Massachusetts Act and Applicable Law.

(b) The registered agent for service of process on the Company in the State of Massachusetts shall be the initial registered agent named in the Certificate of Organization or such other Person or Persons as the Board may designate from time to time in the manner provided by the Massachusetts Act and Applicable Law.

Section 2.05 Purpose; Powers.

(a) The purpose of the Company is to engage in any lawful act or activity for which limited liability companies may be formed under the Massachusetts Act and to engage in any and all activities necessary or incidental thereto.

(b) The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Massachusetts Act.

Section 2.06 Term. The term of the Company commenced on the date the Certificate of Organization was filed with the Secretary of State of the State of Massachusetts and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of this Agreement.

Section 2.07 No State-Law Partnership. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member, Manager, or Officer of the Company shall be a partner or joint venturer of any other Member, Manager or Officer of the Company, for any purposes other than as set forth in the first sentence of this Section 2.07.

Section 2.08 Reimbursement of Expenses of Organization. The Members hereby authorize the Company to pay its expenses of organization and to reimburse any Person advancing funds for that purpose. The Members hereby authorize the Company to pay the cost of the Members for time and materials spent on Company administrative matters, including but not limited to this Agreement, prior to execution of this Agreement.

ARTICLE III. UNITS

Section 3.01 Units Generally. The Membership Interests of the Members shall be represented by issued and outstanding Units. The Board shall maintain a schedule of all Members, their respective mailing addresses, and the amount of Units held by them (the "**Members Schedule**"), and shall update the Members Schedule upon the issuance or Transfer of any Units to any new or existing Member. A copy of the Members Schedule as of the execution of this Agreement is attached hereto as Schedule A.

Section 3.02 Authorization and Issuance of Units. Subject to compliance with Section 9.01 and Section 10.01(b) , the Company is hereby authorized to issue Units. As of the date hereof, NUMBER Units are issued and outstanding in the amounts set forth on the Members Schedule opposite each Member's name.

Section 3.03 Certification of Units.

(a) The Board in its sole discretion may, but shall not be required to, issue certificates to the Members representing the Units held by such Member.

(b) In the event that the Board shall issue certificates representing Units in accordance with Section 3.03(a) , then in addition to any other legend required by Applicable Law, all certificates representing issued and outstanding Units shall bear a legend substantially in the following form:

THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN OPERATING AGREEMENT AMONG THE COMPANY AND ITS MEMBERS, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICE OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH OPERATING AGREEMENT.

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER SUCH ACT AND LAWS, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER.

ARTICLE IV. MEMBERS

Section 4.01 Admission of New Members.

(a) New Members may be admitted from time to time (i) in connection with an issuance of Units by the Company, subject to compliance with the provisions of Section 4.06(b) , Section 9.01, and Section 10.01(b) , as applicable, and (ii) in connection with a Transfer of Units, subject to compliance with the provisions of Article X, and in either case, following compliance with the provisions of Section 4.01(b) .

(b) In order for any Person not already a Member of the Company to be admitted as a Member, whether pursuant to an issuance or Transfer of Units, such Person shall have executed and delivered to the Company a written undertaking substantially in the form of the Joinder Agreement. Upon the amendment of the Members Schedule by the Board and the satisfaction of any other applicable conditions, including, if a condition, the receipt by the Company of payment for the issuance of the applicable Units, such Person shall be admitted as a Member and deemed listed as such on the books and records of the Company and thereupon shall be issued his, her, or its Units. The Board shall also adjust the Capital Accounts of the Members as necessary in accordance with Section 5.03.

Section 4.02 Representations and Warranties of Members. By execution and delivery of this Agreement or a Joinder Agreement, as applicable, each of the Members, whether admitted as of the date hereof or pursuant to Section 4.01, represents and warrants to the Company and acknowledges that:

(a) The Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a public offering and cannot be disposed of unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member is an "accredited investor" within the meaning of Rule 501 promulgated under the Securities Act, as amended by Section 413(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and agrees that it will not take any action that could have an adverse effect on the availability of the exemption from registration provided by Rule 501 promulgated under the Securities Act with respect to the offer and sale of the Units;

(c) Such Member's Units are being acquired for its own account solely for investment and not with a view to resale or distribution thereof;

(d) Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Company and the Company Subsidiaries and such Member acknowledges that it has been provided adequate access to the personnel, properties, premises, and records of the Company and the Company Subsidiaries for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Company and the Company Subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery, and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any Agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding, and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity); and

(j) Neither the issuance of any Units to any Member nor any provision contained herein will entitle the Member to remain in the employment of the Company or affect the right of the Company to terminate the Member's employment at any time for any reason, other than as otherwise provided in such Member's employment Agreement or other similar Agreement with the Company, if applicable.

None of the foregoing shall replace, diminish, or otherwise adversely affect any Member's representations and warranties made by it in any Unit Purchase Agreement.

Section 4.03 No Personal Liability. Except as otherwise provided in the Massachusetts Act, by Applicable Law or expressly in this Agreement, no Member will be obligated personally for any debt, obligation, or liability of the Company or of any Company Subsidiaries or other Members, whether arising in contract, tort, or otherwise, solely by reason of being a Member.

Section 4.04 No Withdrawal. A Member shall not cease to be a Member as a result of the Bankruptcy of such Member or as a result of any other events specified in § 18-304 of the Massachusetts Act. So long as a Member continues to hold any Units, such Member shall not have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. As soon as any Person who is a Member ceases to hold any Units, such Person shall no longer be a Member; *provided*, *however*, that this Agreement shall continue to apply with respect to any Units that have been called in accordance with Section 10.06 until full payment is made therefor in accordance with the terms of this Agreement.

Section 4.05 Death. The death of any Member shall not cause the dissolution of the Company. In such event the Company and its business shall be continued by the remaining Member or Members and the Units owned by the deceased Member shall automatically be Transferred to such Member's heirs; *provided*, that within a reasonable time after such Transfer, the applicable heirs shall sign a written undertaking substantially in the form of the Joinder Agreement.

Section 4.06 Voting. Except as otherwise provided by this Agreement (including Section 4.06(b) and Section 15.09) or as otherwise required by the Massachusetts Act or Applicable Law, each Member shall be entitled to one vote per Unit on all matters upon which the Members have the right to vote under this Agreement.

Section 4.07 Meetings.

(a) **Calling the Meeting.** Meetings of the Members may be called by (i) the Board or (ii) by a Member or group of Members holding more than fifty (50)% of the Units.

(b) **Notice.** Written notice stating the place, date, and time of the meeting and, in the case of a meeting of the Members not regularly scheduled, describing the purposes for which the meeting is called, shall be delivered not fewer than twenty-four (24) hours and not more than thirty (30) days before the date of the meeting to each Member, by or at the direction of the Board or the Member(s) calling the meeting, as the case may be. The Members may hold meetings at the Company's principal office or at such other place as the Board or the Member(s) calling the meeting may designate in the notice for such meeting.

(c) **Participation.** Any Member may participate in a meeting of the Members by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Vote by Proxy.** On any matter that is to be voted on by Members, a Member may vote in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission, or as otherwise permitted by Applicable Law. Every proxy shall be revocable in the discretion of the Member executing it unless otherwise provided in such proxy; *provided*, that such right to revocation shall not invalidate or otherwise affect actions taken under such proxy prior to such revocation.

(f) **Conduct of Business.** The business to be conducted at such meeting need not be limited to the purpose described in the notice and can include business to be conducted by Members. Attendance of a Member at any meeting shall constitute a waiver of notice of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.08 Quorum. A quorum of any meeting of the Members shall require the presence of the Members holding a majority of the Units held by all Members. Subject to Section 4.09, no action at any meeting may be taken by the Members unless the appropriate quorum is present. Subject to Section 4.09, no action may be taken by the Members at any meeting at which a quorum is present without the affirmative vote of Members holding a majority of the Units held by all Members.

Section 4.09 Action Without Meeting. Notwithstanding the provisions of Section 4.08, any matter that is to be voted on, consented to, or approved by Members may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than a majority of Units held by all Members. A record shall be maintained by the Board of each such action taken by written consent of a Member or Members.

Section 4.10 Power of Members. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Massachusetts Act. Except as otherwise specifically provided by this Agreement or required by the Massachusetts Act, no Member, in its capacity as a Member, shall have the power to act for or on behalf of, or to bind, the Company.

Section 4.11 No Interest in Company Property. No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

ARTICLE V. CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

Section 5.01 Initial Capital Contributions. Concurrently herewith, each Initial Member shall contribute to the Company the monies and/or properties which are specified in Schedule A as that Member's initial Capital Contribution.

Section 5.02 Additional Capital Contributions.

(a) No Member shall be required to make any additional Capital Contributions to the Company. Any future Capital Contributions made by any Member shall only be made with the consent of the Board and in connection with an issuance of Units made in compliance with Section 9.01.

(b) No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the payment or repayment of any Capital Contribution by or to any other Member.

Section 5.03 Maintenance of Capital Accounts. The Company shall establish and maintain for each Member a separate capital account (a "**Capital Account**") on its books and records in accordance with this Section 5.03. Each Capital Account shall be established and maintained in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by the amount of:

(i) such Member's Capital Contributions, including such Member's initial Capital Contribution;

(ii) any Net Income or other item of income or gain allocated to such Member pursuant to Article VI; and

(iii) any liabilities of the Company that are assumed by such Member or secured by any property Distributed to such Member.

(b) Each Member's Capital Account shall be decreased by:

(i) the cash amount or Book Value of any property Distributed to such Member pursuant to Article VII and Section 13.03(c) ;

(ii) the amount of any Net Loss or other item of loss or deduction allocated to such Member pursuant to Article VI; and

(iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

Section 5.04 Succession Upon Transfer. In the event that any Units are Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Units and, subject to Section 6.04, shall receive allocations and Distributions pursuant to Article VI, Article VII, and Article XIII in respect of such Units.

Section 5.05 Negative Capital Accounts. In the event that any Member shall have a deficit balance in his, her or its Capital Account, such Member shall have no obligation, during the term of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any Capital Contributions to the Company by reason thereof, except as may be required by Applicable Law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

Section 5.06 No Withdrawal. No Member shall be entitled to withdraw any part of his, her or its Capital Account or to receive any Distribution from the Company, except as provided in this Agreement. No Member shall receive any interest, salary, or drawing with respect to its Capital Contributions or its Capital Account, except as otherwise provided in this Agreement. The Capital Accounts are maintained for the sole purpose of allocating items of income, gain, loss, and deduction among the Members and shall have no effect on the amount of any Distributions to any Members, in liquidation or otherwise.

Section 5.07 Treatment of Loans from Members. Loans by any Member to the Company shall not be considered Capital Contributions and shall not affect the maintenance of such Member's Capital Account, other than to the extent provided in Section 5.03(a)(iii) , if applicable.

Section 5.08 Modifications. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed to comply with such Treasury Regulations, the Board may authorize such modifications.

ARTICLE VI. [RESERVED]

ARTICLE VII. DISTRIBUTIONS

Section 7.01 General.

(a) Subject to Section 7.01(b), and Section 7.02, the Board shall have sole discretion regarding the amounts and timing of Distributions to Members, including to decide to forego payment of Distributions in order to provide for the retention and establishment of reserves of, or payment to third parties of, such funds as it deems necessary with respect to the reasonable business needs of the Company (which needs may include the payment or the making of provision for the payment when due of the Company's obligations, including, but not limited to, present and anticipated debts and obligations, capital needs and expenses, the payment of any management or administrative fees and expenses, and reasonable reserves for contingencies).

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any Distribution to Members if such Distribution would violate the Massachusetts Act or other Applicable Law.

Section 7.02 Priority of Distributions. After making all Distributions required for a given Fiscal Year subject to the priority of Distributions pursuant to Section 13.03(c), if applicable, all Distributions determined to be made by the Board pursuant to Section 7.01 shall be made in the following manner:

(a) first, to the Members pro rata in proportion to their holdings of Units, until Distributions under this Section 7.02(c) equal the aggregate amount of Capital Contributions attributable to the Members in respect of their acquisitions of Units; and

(d) fourth, any remaining amounts to the Members pro rata in proportion to their holdings of Units.

Section 7.03 Distributions in Kind.

(a) The Board is hereby authorized, in its sole discretion, to make Distributions to the Members in the form of securities or other property held by the Company; *provided*, that Tax Advances shall only be made in cash. In any non-cash Distribution, the securities or property so Distributed will be Distributed among the Members in the same proportion and priority as cash equal to the Fair Market Value of such securities or property would be Distributed among the Members pursuant to Section 7.02.

(b) Any Distribution of securities shall be subject to such conditions and restrictions as the Board determines are required or advisable to ensure compliance with Applicable Law. In furtherance of the foregoing, the Board may require that the Members execute and deliver such documents as the Board may deem necessary or appropriate to ensure compliance with all federal and state securities laws that apply to such Distribution and any further Transfer of the Distributed securities, and may appropriately legend the certificates that represent such securities to reflect any restriction on Transfer with respect to such laws.

ARTICLE VIII. MANAGEMENT

Section 8.01 Establishment of the Board. A board of managers of the Company (the "**Board**") is hereby established and shall be comprised of natural Persons (each such Person, a "**Manager**") who shall be appointed in accordance with the provisions of Section 8.02. The business and affairs of the Company shall be managed, operated, and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority, and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement.

Section 8.02 Board Composition; Vacancies.

(a) The Company and the Members shall take such actions as may be required to ensure that the number of managers constituting the Board is at all times five (5). The Board shall be comprised as follows:

(i) Three (3) individuals designated by Agrify (the "**Agrify Managers**"), who shall initially be Raymond Chang, Matt Liotta, and Mary Anne Squillace; and

(ii) Two (2) individuals designated by Valiant (the "**Valiant Managers**"), who shall initially be Eamonn O'Kane and Chris Tenaglia.

(iii) the Chairman of the Board shall initially be Raymond Chang.

At all times, the composition of any board of directors of any Company Subsidiary shall be the same as that of the Board.

(b) In the event that a vacancy is created on the Board at any time due to the death, Disability, retirement, resignation or removal of an Agrify Manager, then Agrify shall have the right to designate an individual to fill such vacancy and the Company and each Member hereby agree to take such actions as may be required to ensure the election or appointment of such designee to fill such vacancy on the Board. In the event that Agrify shall fail to designate in writing a representative to fill a vacant Agrify Manager position on the Board, and such failure shall continue for more than thirty (30) days after notice from the Company to Agrify with respect to such failure, then the vacant position shall be filled by an individual designated by the Agrify Managers then in office; *provided*, that such individual shall be removed from such position if Agrify so directs and simultaneously designate a new Agrify Manager.

(c) The Board shall maintain a schedule of all Managers with their respective mailing addresses (the "**Managers Schedule**"), and shall update the Managers Schedule upon the removal or replacement of any Manager in accordance with this Section 8.02 or Section 8.03. A copy of the Managers Schedule as of the execution of this Agreement is attached hereto as Schedule B.

Section 8.03 Removal; Resignation.

(a) An Agrify Manager may be removed or replaced at any time from the Board, without cause, upon, and only upon, the written request of Agrify. A Valiant Manager may be removed or replaced at any time from the Board, without cause, upon, and only upon, the written request of Valiant.

(b) A Manager may resign at any time from the Board by delivering his written resignation to the Board. Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Board's acceptance of a resignation shall not be necessary to make it effective.

Section 8.04 Meetings.

(a) **Generally.** The Board shall meet at such time and at such place as the Board may designate. Meetings of the Board may be held either in person or by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, at the offices of the Company or such other place (either within or outside the State of Massachusetts) as may be determined from time to time by the Board. Written notice of each meeting of the Board shall be given to each Manager at least 24 hours prior to each such meeting.

(b) **Special Meetings.** Special meetings of the Board shall be held on the call of any three (3) Managers upon at least two (2) days' written notice (if the meeting is to be held in person) or one (1) day's written notice (if the meeting is to be held by telephone communications or video conference) to the Managers, or upon such shorter notice as may be approved by all the Managers. Any Manager may waive such notice as to himself.

(c) **Attendance and Waiver of Notice.** Attendance of a Manager at any meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 8.05 Quorum; Manner of Acting.

(a) **Quorum.** A majority of the Managers serving on the Board shall constitute a quorum for the transaction of business of the Board. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the Managers present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(b) **Participation.** Any Manager may participate in a meeting of the Board by means of telephone or video conference or other communications device that permits all Managers participating in the meeting to hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. A Manager may vote or be present at a meeting either in person or by proxy, and such proxy may be granted in writing, by means of Electronic Transmission, or as otherwise permitted by Applicable Law.

(c) **Binding Act.** Each Manager shall have one vote on all matters submitted to the Board or any committee thereof. With respect to any matter before the Board, the act of a majority of the Managers constituting a quorum shall be the act of the Board.

Section 8.06 Action By Written Consent. Notwithstanding anything herein to the contrary, any action of the Board (or any committee of the Board) may be taken without a meeting if either (a) a written consent of a majority of the Managers on the Board (or committee) shall approve such action; *provided*, that prior written notice of such action is provided to all Managers at least one day before such action is taken, or (b) a written consent constituting all of the Managers on the Board (or committee) shall approve such action. Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and may be stated as such in any document or instrument filed with the Secretary of State of Massachusetts.

Section 8.07 Compensation; No Employment.

(a) Each Manager shall be reimbursed for his reasonable out-of-pocket expenses incurred in the performance of his duties as a Manager, pursuant to such policies as from time to time established by the Board. Nothing contained in this Section 8.07 shall be construed to preclude any Manager from serving the Company in any other capacity and receiving reasonable compensation for such services.

(b) This Agreement does not, and is not intended to, confer upon any Manager any rights with respect to continued employment by the Company, and nothing herein should be construed to have created any employment Agreement with any Manager.

Section 8.08 Committees.

(a) **Establishment.** The Board may, by resolution, designate from among the Managers one or more committees, each of which shall be comprised of one or more Managers; *provided*, that in no event may the Board designate any committee with all of the authority of the Board. Subject to the immediately preceding proviso, any such committee, to the extent provided in the resolution forming such committee, shall have and may exercise the authority of the Board, subject to the limitations set forth in Section 8.08(b) . The Board may dissolve any committee or remove any member of a committee at any time.

(b) **Limitation of Authority.** No committee of the Board shall have the authority of the Board in reference to:

(i) authorizing or making Distributions to the Members;

(ii) authorizing the issuance Units;

(iii) approving a plan of merger or sale of the Company;

(iv) recommending to the Members a voluntary dissolution of the Company or a revocation thereof;

(v) filling vacancies in the Board; or

(vi) altering or repealing any resolution of the Board that by its terms provides that it shall not be so amendable or repealable.

Section 8.09 Officers.

(a) The Board may appoint individuals as officers of the Company (the "**Officers**") as it deems necessary or desirable to carry on the business of the Company and the Board may delegate to such Officers such power and authority as the Board deems advisable, subject to the limitations set forth in 8.09(b). No Officer need be a Member or Manager. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his successor is designated by the Board or until his earlier death, resignation, or removal. Any Officer may resign at any time upon written notice to the Board. Any Officer may be removed by the Board (acting by majority vote of all Managers other than the Officer being considered for removal, if applicable) with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal, or otherwise, may, but need not, be filled by the Board.

(b) Notwithstanding anything in this Agreement to the contrary, Valiant shall have the sole right to appoint the Chief Executive Officer. The CEO shall initially be Eamonn O'Kane.

(c) Notwithstanding anything in this Agreement to the contrary, Agrify shall have the sole right to appoint the Chief Financial Officer and Treasurer. Initially, the CFO and Treasurer will be Mary Anne Squillace.

(d) Notwithstanding anything in this Agreement to the contrary, the following powers and authority are reserved solely for the Board to determine in its discretion:

(i) Approval of all Company budgets;

(ii) Approval of any action or inaction that would result in the Company exceeding the applicable, then-approved budget by five percent (5%) or more;

(iii) entering into any contract with either or both an aggregate value equal to or exceeding Ten Thousand Dollars ($10,000), or an annualized value equal to or exceeding Ten Thousand Dollars ($10,000);

(iv) assigning or pledging any Company property with a Fair Market Value of more than Five Thousand Dollars ($5,000.00) to any Person;

(v) except as explicitly set forth in this Agreement, entering into any hold harmless, indemnity, covenant not to sue, or any other similar agreement with any Manager, Member, or other Person;

(vi) entering into any partnership, distribution, marketing, channel partnership, or other similar commercial arrangement with any Person; and

(vii) entering into any agreement granting any third party any interest in any Company intellectual property.

Section 8.10 No Personal Liability. Except as otherwise provided in the Massachusetts Act, by Applicable Law or expressly in this Agreement, no Manager will be obligated personally for any debt, obligation, or liability of the Company or of any Company Subsidiaries, whether arising in contract, tort, or otherwise, solely by reason of being a Manager.

ARTICLE IX. PRE-EMPTIVE RIGHTS

Section 9.01 Pre-Emptive Right.

(a) **Issuance of New Securities.** The Company hereby grants to each holder of Units (each, a "**Pre-Emptive Member**") the right to purchase its Pro Rata Portion of any New Securities that the Company may from time to time propose to issue or sell to any party.

(b) **Definition of New Securities.** As used herein, "New Securities" shall mean new Units, except that such definition shall not include Units issued or sold by the Company in connection with: (A) the conversion or exchange of any securities of the Company into Units, or the exercise of any warrants or other rights to acquire Units; (C) any acquisition by the Company or any Company Subsidiary of any equity interests, assets, properties, or business of any Person; (D) any merger, consolidation, or other business combination involving the Company or any Company Subsidiary; (E) the commencement of any Public Offering or any transaction or series of related transactions involving a Change of Control; (F) any subdivision of Units (by a split of Units or otherwise), payment of Distributions, or any similar recapitalization; (G) any private placement of warrants to purchase Membership Interests to lenders or other institutional investors (excluding the Members) in any arm's length transaction in which such lenders or investors provide debt financing to the Company or any Company Subsidiary; (H) a joint venture, strategic alliance, or other commercial relationship with any Person (including without limitation Persons that are customers, suppliers, and strategic partners of the Company or any Company Subsidiary) relating to the operation of the Company's or any Company Subsidiary's business and not for the primary purpose of raising equity capital; or (I) any office lease or equipment lease or similar equipment financing transaction in which the Company or any Company Subsidiary obtains from a lessor or vendor the use of such office space or equipment for its business.

(c) **Additional Issuance Notices.** The Company shall give written notice (an "**Issuance Notice**") of any proposed issuance or sale described in Section 9.01(a) to the Pre-Emptive Members within five (5) Business Days following any meeting of the Board at which any such issuance or sale is approved. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to purchase New Securities (a "**Prospective Purchaser**") and shall set forth the material terms and conditions of the proposed issuance or sale, including:

(i) the number and description of the New Securities proposed to be issued and the percentage of the Company's Units then outstanding on a Fully Diluted Basis that such issuance would represent;

(ii) the proposed issuance date, which shall be at least ten (10) Business Days from the date of the Issuance Notice;

(iii) the proposed purchase price per unit of the New Securities; and

(iv) if the consideration to be paid by the Prospective Purchaser includes non-cash consideration, the Board's good-faith determination of the Fair Market Value thereof.

(d) **Exercise of Pre-emptive Rights.** Each Pre-Emptive Member shall for a period of five (5) Business Days following the receipt of an Issuance Notice (the "**Exercise Period**") have the right to elect irrevocably to purchase all or any portion of its Pro Rata Portion of any New Securities at the purchase prices set forth in the Issuance Notice by delivering a written notice to the Company (an "**Acceptance Notice**") specifying the number of New Securities it desires to purchase. The delivery of an Acceptance Notice by a Pre-Emptive Member shall be a binding and irrevocable offer by such Member to purchase the New Securities described therein. The failure of a Pre-Emptive Member to deliver an Acceptance Notice by the end of the Exercise Period shall constitute a waiver of its rights under this Section 9.01 with respect to the purchase of such New Securities, but shall not affect its rights with respect to any future issuances or sales of New Securities.

(e) **Over-Allotment.** No later than five (5) Business Days following the expiration of the Exercise Period, the Company shall notify each Pre-Emptive Member in writing of the number of New Securities that each Pre-Emptive Member has agreed to purchase (including, for the avoidance of doubt, where such number is zero)(the "**Over-Allotment Notice**"). Each Pre-Emptive Member exercising its rights to purchase its Pro Rata Portion of the New Securities in full (an "**Exercising Member**") shall have a right of over-allotment such that if any other Pre-Emptive Member has failed to exercise its right under this Section 9.01 to purchase its full Pro Rata Portion of the New Securities (each, a "**Non-Exercising Member**"), such Exercising Member may purchase its Pro Rata Portion of such Non-Exercising Member's allotment by giving written notice to the Company within five (5) Business Days of receipt of the Over-Allotment Notice (the "**Over-Allotment Exercise Period**").

(f) **Sales to the Prospective Purchaser.** Following the expiration of the Exercise Period and, if applicable, the Over-allotment Exercise Period, the Company shall be free to complete the proposed issuance or sale of New Securities described in the Issuance Notice with respect to which Pre- Emptive Members declined to exercise the pre-emptive right set forth in this Section 9.01 on terms no less favorable to the Company than those set forth in the Issuance Notice (except that the amount of New Securities to be issued or sold by the Company may be reduced); *provided*, that: (i) such issuance or sale is closed within twenty (20) Business Days after the expiration of the Exercise Period and, if applicable, the Over-Allotment Exercise Period (subject to the extension of such twenty (20) Business Day period for a reasonable time not to exceed forty (40) Business Days to the extent reasonably necessary to obtain any third-party approvals); and (ii) for the avoidance of doubt, the price at which the New Securities are sold to the Prospective Purchaser is at least equal to or higher than the purchase price described in the Issuance Notice. In the event the Company has not sold such New Securities within such time period, the Company shall not thereafter issue or sell any New Securities without first again offering such securities to the Members in accordance with the procedures set forth in this Section 9.01.

(g) **Closing of the Issuance.** The closing of any purchase by any Pre-Emptive Member shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. Upon the issuance or sale of any New Securities in accordance with this Section 9.01, the Company shall deliver the New Securities free and clear of any liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Securities shall be, upon issuance thereof to the Exercising Members and after payment therefor, duly authorized, validly issued, fully paid, and non-assessable. The Company, in the discretion of the Board pursuant to Section 3.03(a) , may deliver to each Exercising Member certificates evidencing the New Securities. Each Exercising Member shall deliver to the Company the purchase price for the New Securities purchased by it by certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Securities shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including, without limitation, entering into such additional Agreements as may be necessary or appropriate.

ARTICLE X. TRANSFER

Section 10.01 General Restrictions on Transfer.

(a) Each Member acknowledges and agrees that such Member shall not Transfer any Units except as permitted in accordance with the procedures described in this Section 10, as applicable. Any attempted Transfer in violation of, or outside of, the procedures set forth in this Agreement shall be null and void ab initio, and the transferee shall not become a Member.

Any Transfer or attempted Transfer of any Units in violation of this Agreement shall be null and void, no such Transfer shall be recorded on the Company's books, and the purported Transferee in any such Transfer shall not be treated (and the purported Transferor shall continue be treated) as the owner of such Units for all purposes of this Agreement.

(d) For the avoidance of doubt, any Transfer of Units made in accordance with the procedures described in Section 10.03 through Section 10.07, as applicable, and purporting to be a sale, transfer, assignment, or other disposal of the entire Membership Interest represented by such Units, inclusive of all the rights and benefits applicable to such Membership Interest as described in the definition of the term **"Membership Interest,"** shall be deemed a sale, transfer, assignment, or other disposal of such Membership Interest in its entirety as intended by the parties to such Transfer, and shall not be deemed a sale, transfer, assignment, or other disposal of any less than all of the rights and benefits described in the definition of the term **"Membership Interest,"** unless otherwise explicitly agreed to by the parties to such Transfer.

Section 10.02 Permitted Transfers. The provisions of Section 10.01(a) and Section 10.03 shall not apply to any of the following Transfers by any Member of any of its Units:

(a) With respect to any Member, to (i) such Member's spouse, parent, siblings, descendants (including adoptive relationships and stepchildren), and the spouses of each such natural persons (collectively, "**Family Members**"), (ii) a trust under which the distribution of Units may be made only to such Member and/or any Family Member of such Member, (iii) a charitable remainder trust, the income from which will be paid to such Member during his life, (iv) a corporation, partnership, or limited liability company, the stockholders, partners, or members of which are only such Member and/or Family Members of such Member, or (v) by will or by the laws of intestate succession, to such Member's executors, administrators, testamentary trustees, legatees, or beneficiaries; *provided*, that any Member who Transfers Units shall remain bound by the provisions of Section 11.01;

(b) Pursuant to a Public Offering; or

(c) as otherwise approved by the Board.

Section 10.03 Right of First Refusal.

(a) **Offered Units.**

(i) At any time, subject to the terms and conditions specified in Section 10.01, Section 10.02 and this Section 10.03, the Company, first, and each Member, second, shall have a right of first refusal if any other Member (the "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of the Units it owns (the "**Offered Units**").

(ii) As used herein, the term "**ROFR Rightholders**" shall mean all Members other than the Offering Member.

(b) **Offering; Exceptions.** Each time the Offering Member receives an offer for a Transfer of any of its Units (other than Transfers that (i) are permitted by Section 10.02, the Offering Member shall first make an offering of the Offered Units to the Company, *first*, and the ROFR Rightholders, *second*, all in accordance with the following provisions of this Section 10.03, prior to Transferring such Offered Units to the proposed purchaser.

(c) **Offer Notice.**

(i) The Offering Member shall, within five (5) Business Days of receipt of the Transfer offer, give written notice (the "**Offering Member Notice**") to the Company and the ROFR Rightholders stating that it has received a bona fide offer for a Transfer of its Units and specifying:

(A) the number of Units to be Transferred by the Offering Member;

(B) the proposed date, time, and location of the closing of the Transfer, which shall not be less than 30 (thirty) days from the date of the Offering Member Notice;

(C) the purchase price per Offered Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and

(D) the name of the Person who has offered to purchase such Offered Units.

(ii) The Offering Member Notice shall constitute the Offering Member's offer to Transfer the Offered Units to the Company and the ROFR Rightholders, which offer shall be irrevocable until the end of the ROFR Rightholder Option Period described in Section 10.03(d)(iv) .

(iii) By delivering the Offering Member Notice, the Offering Member represents and warrants to the Company and each ROFR Rightholder that:

(A) the Offering Member has full right, title, and interest in and to the Offered Units;

(B) the Offering Member has all the necessary power and authority and has taken all necessary action to Transfer such Offered Units as contemplated by this Section 10.03; and

(C) the Offered Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(d) **Exercise of Right of First Refusal.**

(i) Upon receipt of the Offering Member Notice, the Company and each ROFR Rightholder shall have the right to purchase the Offered Units in the following order of priority: *first*, the Company shall have the right to purchase all or any portion of the Offered Units in accordance with the procedures set forth in Section 10.03(d)(iii) , and *thereafter*, the ROFR Rightholders shall have the right to purchase the Offered Units, in accordance with the procedures set forth in Section 10.03(d)(iv) , to the extent the Company does not exercise its right in full. Notwithstanding the foregoing, the Company and the ROFR Rightholders may only exercise their right to purchase the Offered Units if, after giving effect to all elections made under this Section 10.03(d) , no less than all of the Offered Units will be purchased by the Company and/or the ROFR Rightholders.

(ii) Reserved.

(iii) The initial right of the Company to purchase any Offered Units shall be exercisable with the delivery of a written notice (the "**Company ROFR Exercise Notice**") by the Company to the Offering Member and the ROFR Rightholders within ten (10) days of receipt of the Offering Member Notice (the "**Company Option Period**"), stating the number (including where such number is zero) and type of Offered Units the Company elects irrevocably to purchase on the terms and respective purchase prices set forth in the Offering Member Notice. The Company ROFR Exercise Notice shall be binding upon delivery and irrevocable by the Company.

(iv) If the Company shall have indicated an intent to purchase any less than all of the Offered Units, the ROFR Rightholders shall have the right to purchase the remaining Offered Units not selected by the Company. For a period of fifteen (15) Business Days following the receipt of a Company ROFR Exercise Notice in which the Company has elected to purchase less than all the Offered Units (such period, the "**ROFR Rightholder Option Period**"), each ROFR Rightholder shall have the right to elect irrevocably to purchase all or none of its Pro Rata Portion of the remaining Offered Units by delivering a written notice to the Company and the Offering Member (a "**Member ROFR Exercise Notice**") specifying its desire to purchase its Pro Rata Portion of the remaining Offered Units, on the terms and purchase price set forth in the Offering Member Notice. In addition, each ROFR Rightholder shall include in its Member ROFR Exercise Notice the number of remaining Offered Units that it wishes to purchase if any other ROFR Rightholders do not exercise their rights to purchase their entire Pro Rata Portions of the remaining Offered Units. Any Member ROFR Exercise Notice shall be binding upon delivery and irrevocable by the ROFR Rightholder.

(v) The failure of the Company or any ROFR Rightholder to deliver a Company ROFR Exercise Notice or Member ROFR Exercise Notice, respectively, by the end of the Company Option Period or ROFR Rightholder Option Period, respectively, shall constitute a waiver of their respective rights of first refusal under this Section 10.03 with respect to the Transfer of Offered Units, but shall not affect their respective rights with respect to any future Transfers.

(e) **Allocation of Offered Units.** Upon the expiration of the ROFR Rightholder Option Period, the Offered Units not selected for purchase by the Company pursuant to Section 10.03(d)(iii) shall be allocated for purchase among the ROFR Rightholders as follows:

(i) First, to each ROFR Rightholder having elected to purchase its entire Pro Rata Portion of such Units, such ROFR Rightholder's Pro Rata Portion of such Units; and

(ii) Second, the balance, if any, not allocated under clause (i) above (and not purchased by the Company pursuant to Section 10.03(d)(iii)), shall be allocated to those ROFR Rightholders who set forth in their Member ROFR Exercise Notices a number of Offered Units that exceeded their respective Pro Rata Portions (the "**Purchasing Rightholders**"), in an amount, with respect to each such Purchasing Rightholder, that is equal to the lesser of:

(A) the number of Offered Units that such Purchasing Rightholder elected to purchase in excess of its Pro Rata Portion; or

(B) the product of (x) the number of Offered Units not allocated under Section 10.03(e)(i) (and not purchased by the Company pursuant to Section 10.03(d)(iii)), multiplied by (y) a fraction, the numerator of which is the number of Offered Units that such Purchasing Rightholder was permitted to purchase pursuant to clause (i), and the denominator of which is the aggregate number of Offered Units that all Purchasing Rightholders were permitted to purchase pursuant to Section 10.03(e)(i).

The process described in Section 10.03(e)(ii) shall be repeated until no Offered Units remain or until such time as all Purchasing Rightholders have been permitted to purchase all Offered Units that they desire to purchase.

(f) **Consummation of Sale.** In the event that the Company and/or the ROFR Rightholders shall have, in the aggregate, exercised their respective rights to purchase all and not less than all of the Offered Units, then the Offering Member shall sell such Offered Units to the Company and/or the ROFR Rightholders, and the Company and/or the ROFR Rightholders, as the case may be, shall purchase such Offered Units, within sixty (60) days following the expiration of the ROFR Rightholder Option Period (which period may be extended for a reasonable time not to exceed ninety (90) days to the extent reasonably necessary to obtain required approvals or consents from any Governmental Authority). Each Member shall take all actions as may be reasonably necessary to consummate the sale contemplated by this Section 10.03(f) , including, without limitation, entering into Agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 10.03(f) , the Offering Member shall deliver to the Company and/or the participating ROFR Rightholders certificates (if any) representing the Offered Units to be sold, free and clear of any liens or encumbrances (other than those contained in this Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the Company and/or such ROFR Rightholders by certified or official bank check or by wire transfer of immediately available funds.

(g) **Sale to Proposed Purchaser.** In the event that the Company and/or the ROFR Rightholders shall not have collectively elected to purchase all of the Offered Units, then the Offering Member may Transfer all of such Offered Units, at a price per Offered Unit not less than specified in the Offering Member Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offering Member Notice, but only to the extent that such Transfer occurs within ninety (90) days after expiration of the ROFR Rightholder Option Period. Any Offered Units not Transferred within such 90-day period will be subject to the provisions of this Section 10.03 upon subsequent Transfer.

Section 10.04 Put Option and Call Option. Agrify hereby grants to Valiant a put option on all of Valiant's Units of the Company, as set forth herein ("**Put Option**"). Valiant hereby grants to Agrify a call option on all of Valiant's Units of the Company, as set forth herein ("**Call Option**").

(a) The Put Option and Call Option may each only be exercised, if at all, during the Exercise Period. "**Exercise Period**" means that period of time between the second and fifth anniversary of either (i) an initial Public Offering of Agrify stock, or (ii) a reverse merger of Agrify into a publicly-listed entity;

(b) In each case, the consideration for Units of the Company purchased pursuant to either the Put Option or Call Option shall be limited to payment in Agrify common stock.

(c) The Option Exercise Price shall determine the value of all of the Units transferred pursuant to either the Put Option or Call Option. "**Option Exercise Price**" means, as determined at the time of such option exercise:

(i) Fifty Percent (50%) of the Gross Sales of Company multiplied by the P/S Ratio of Agrify (as each term is defined herein); plus

(ii) Fifty Percent (50%) of the Net Earnings of Company multiplied by the P/E Ratio of Agrify (as each term is defined herein); then

(iii) the resulting sum (i) and (ii) above then multiplied by Sixty Percent (0.60).

(d) "**Gross Sales**" means, for the then-current date, the gross sales of Agrify in the preceding year as stated in Agrify's audited GAAP financials for such year.

(e) "**Net Earnings**" means, for the then-current date, the net earnings of Agrify for the preceding year, as stated in Agrify's audited GAAP financials for such year

(f) "**P/S Ratio**" means, the then-current Fair Market Value of Agrify common stock multiplied by the then-current number of all outstanding shares of Agrify, divided by the gross sales of Agrify.

(g) "**P/E Ratio**" means, the then-current Fair Market Value of Agrify common stock multiplied by the the then-current number of all outstanding shares of Agrify, divided by the net earnings of Agrify.

(h) "**Fair Market Value**" means, as of the effective date of the option exercise notice, the per- share value of Agrify common stock as determined by either (i) if there is an existing, bona-fide offer from an unrelated third party for all shares of Agrify or substantially all of the assets of Agrify, the per-share value as either defined in such stock purchase offer or expected to be received as a result of liquidation after such asset sale, or (ii) if there is no such bona-fide third party offer as herein described, then by the highest per-share price for Agrify on the relevant public stock exchange.

(i) Procedure. During the Exercise Period, Valiant or Agrify may exercise its respective option by delivering a written notice to the other party. The closing of the sale of Units pursuant to such an exercise of the Call Option or Put Option (the "Closing") will occur within One Hundred Twenty (120) days following the delivery of such notice of exercise, except that such Closing may be delayed for up to an additional ninety (90) days if reasonably required by Company, Valiant, or Agrify to calculate the amounts described herein or otherwise satisfy any requirements or conditions reasonably related to the applicable option.

(j) The Call Option and Put Option are each conditioned upon Valiant and Agrify executing reasonable and customary agreements related to the contemplated transactions, including but not limited to (i) a purchase agreement for Valiant's Units of the Company, and (ii) stock purchase and shareholder agreements for shares of Agrify.

(k) The Call Option and Put Option set forth herein shall be binding upon and inure to the benefit of each of the Initial Members' respective successors and assigns.

(l) The Call Option and Put Option include all Units of Company held by Valiant as of the date of this Agreement and any Units hereinafter acquired by Valiant.

ARTICLE XI. COVENANTS

Section 11.01 Confidentiality.

(a) Each Member acknowledges that during the term of this Agreement, he will have access to and become acquainted with trade secrets, proprietary information, and confidential information belonging to the Company, the Company Subsidiaries, and their Affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements, and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists, or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium)(collectively, "**Confidential Information**"). In addition, each Member acknowledges that: (i) the Company has invested, and continues to invest, substantial time, expense, and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company with a competitive advantage over others in the marketplace; and (iii) the Company would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other Agreement to which any Member is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing his investment in the Company or performing his duties as a Manager, Officer, employee, consultant, or other service provider of the Company) at any time, including, without limitation, use for personal, commercial, or proprietary advantage or profit, either during his association or employment with the Company or thereafter, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss, and theft.

(b) Nothing contained in Section 11.01(a) shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Member; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories, or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other Members; (vi) to such Member's Representatives who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by the provisions of this Section 11.01 as if a Member; or (vii) to any potential Permitted Transferee in connection with a proposed Transfer of Units from such Member, as long as such Transferee agrees to be bound by the provisions of this Section 11.01 as if a Member; *provided*, that in the case of clause (i), (ii) or (iii), such Member shall notify the Company and other Members of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and other Members) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) The restrictions of Section 11.01(a) shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or becomes available to a Member or any of its Representatives on a non-confidential basis prior to its disclosure to the receiving Member and any of its Representatives in compliance with this Agreement; (iii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iv) becomes available to the receiving Member or any of its Representatives on a non-confidential basis from a source other than the Company, any other Member or any of their respective Representatives; *provided*, that such source is not known by the recipient of the Confidential Information to be bound by a confidentiality Agreement with the disclosing Member or any of its Representatives.

Section 11.02 Other Business Activities. The parties hereto expressly acknowledge and agree that: (i) each Member and its respective Affiliates are permitted to have, and may presently or in the future have, investments or other business relationships, ventures, Agreements, or arrangements with entities engaged in the business of the Company, other than through the Company and the Company Subsidiaries (an "**Other Business**"); (ii) each Member and its respective Affiliates have or may develop a strategic relationship with businesses that are or may be competitive with the Company and the Company Subsidiaries; (iii) none of any Member or its respective Affiliates will be prohibited from pursuing and engaging in any such activities; (iv) none of any Member or its respective Affiliates will be obligated to inform the Company or any Member of any such opportunity, relationship, or investment (a "**Company Opportunity**") or to present Company Opportunity, and the Company hereby renounces any interest in a Company Opportunity and any expectancy that a Company Opportunity will be offered to it; (v) nothing contained herein shall limit, prohibit, or restrict any Board designee of the Initial Members from serving on the board of directors or other governing body or committee of any Other Business; and (vi) the Members will not acquire, be provided with an option or opportunity to acquire, or be entitled to any interest or participation in any Other Business as a result of the participation therein of any of the Initial Members or their respective Affiliates. The parties hereto expressly authorize and consent to the involvement of the Initial Members and/or their respective Affiliates in any Other Business; *provided*, that any transactions between the Company and/or the Company Subsidiaries and an Other Business will be on terms no less favorable to the Company and/or the Company Subsidiaries than would be obtainable in a comparable arm's-length transaction. The parties hereto expressly waive, to the fullest extent permitted by Applicable Law, any rights to assert any claim that such involvement breaches any fiduciary or other duty or obligation owed to the Company or any Member or to assert that such involvement constitutes a conflict of interest by such Persons with respect to the Company or any Member.

ARTICLE XII. ACCOUNTING; TAX MATTERS

Section 12.01 Financial Statements. The Company shall furnish to each Member holding 25% or more of the Units of the Company (each, a "**Qualified Member**") the following reports:

(a) **Annual Financial Statements.** As soon as available, and in any event within one hundred twenty (120) days after the end of each Fiscal Year, consolidated balance sheets of the Company and Company Subsidiaries as at the end of each such Fiscal Year and consolidated statements of income, cash flows, and Members' equity for such Fiscal Year.

(b) **Quarterly Financial Statements.** As soon as available, and in any event within forty-five (45) days after the end of each quarterly accounting period in each Fiscal Year (other than the last fiscal quarter of the Fiscal Year), unaudited consolidated balance sheets of the Company and Company Subsidiaries as at the end of each such fiscal quarter and for the current Fiscal Year to date and unaudited consolidated statements of income, cash flows, and Members' equity for such fiscal quarter and for the current Fiscal Year to date, all in reasonable detail and all prepared in accordance with GAAP.

Section 12.02 Inspection Rights. Upon reasonable notice from a Qualified Member, the Company shall, and shall cause its Managers, Officers, and employees to, afford each Qualified Member and its Representatives reasonable access during normal business hours to (i) the Company's and the Company Subsidiaries' properties, offices, plants, and other facilities, (ii) the corporate, financial and similar records, reports, and documents of the Company and the Company Subsidiaries, including, without limitation, all books and records, minutes of proceedings, internal management documents, reports of operations, reports of adverse developments, copies of any management letters, and communications with Members or Managers, and to permit each Qualified Member and its Representatives to examine such documents and make copies thereof, and (iii) the Company's and the Company Subsidiaries' Officers, senior employees, and public accountants, and to afford each Qualified Member and its Representatives the opportunity to discuss and advise on the affairs, finances, and accounts of the Company and the Company Subsidiaries with their Officers, senior employees, and public accountants (and the Company hereby authorizes said accountants to discuss with such Qualified Member and its Representatives such affairs, finances, and accounts).

Section 12.03 Budget. Not later than thirty (30) days after full execution of the Agreement, and thereafter no later than thirty (30) days prior to the commencement of each Fiscal Year, the Company shall prepare, submit to, and obtain the approval of the Board of a business plan and monthly and annual operating budgets for the Company and Company Subsidiaries in detail for the upcoming Fiscal Year, including capital and operating expense budgets, cash flow projections, covenant compliance calculations of all outstanding and projected indebtedness, and profit and loss projections, all itemized in reasonable detail (including itemization of provisions for Officers' compensation)(the "**Budget**"). The Company and the Subsidiaries shall use commercially reasonable efforts to operate in all material respects in accordance with the Budget. The Company shall review the Budget periodically and shall not make any material changes thereto without the approval of the Board.

Section 12.04 Tax Election.

(a) The Company has made an election under Treasury Regulation Section 301.7701-3(c) to be classified as an association taxable as a corporation for U.S. federal tax purposes. The Company shall not make an election to be classified as other than an association taxable as a corporation pursuant to Treasury Regulation Section 701.7701-3.

(b) Except as otherwise provided herein, the Board of Directors shall determine whether the Company should make, change or revoke any other elections permitted by the Code.

Section 12.05 Tax Matters Representative.

(a) **Appointment.** The Members hereby appoint Agrify as the "partnership representative" as provided in Code Section 6223(a)(the "**Tax Matters Representative**"). If Agrify ceases to be the Tax Matters Representative for any reason, the Board shall appoint a new Tax Matters Representative. The Tax Matters Representative shall appoint an individual as the sole person authorized to represent the Tax Matters Representative in audits and other proceedings.

(b) **Tax Examinations and Audits.** The Tax Matters Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Tax Matters Representative shall have sole authority to act on behalf of the Company in any such examinations and any resulting judicial proceedings, and shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any Taxing Authority. The Company and its Members shall be bound by the actions taken by the Tax Matters Representative.

(c) **US Federal Tax Proceedings.** In the event of an audit of the Company by any Taxing Authority, the Tax Matters Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Tax Matters Representative or the Company under the Code or other relevant tax regulation. Each Member agrees to cooperate with the Tax Matters Representative and to do or refrain from doing any or all things reasonably requested by the Tax Matters Representative with respect to the conduct of such examinations by any Taxing Authority.

(d) **Tax Returns and Tax Deficiencies.** Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax, or interest imposed with respect to such taxes) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member as provided in Section 7.05(d) ..

Section 12.06 Tax Returns. At the expense of the Company, the Board (or any Officer that it may designate pursuant to Section 8.09) shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company pursuant to the Code as well as all other required tax returns in each jurisdiction in which the Company and the Company Subsidiaries own property or do business. As soon as reasonably possible after the end of each Fiscal Year, the Board or designated Officer will cause to be delivered to each Person who was a Member at any time during such Fiscal Year, IRS Schedule K-1 and such other information with respect to the Company as may be necessary for the preparation of such Person's federal, state and local income tax returns for such Fiscal Year.

Section 12.07 Company Funds. All funds of the Company shall be deposited in its name, or in such name as may be designated by the Board, in such checking, savings, or other accounts, or held in its name in the form of such other investments as shall be designated by the Board. The funds of the Company shall not be commingled with the funds of any other Person. All withdrawals of such deposits or liquidations of such investments by the Company shall be made exclusively upon the signature or signatures of such Officer or Officers as the Board may designate.

ARTICLE XIII. DISSOLUTION AND LIQUIDATION

Section 13.01 Events of Dissolution. The Company shall be dissolved and its affairs wound up only upon the occurrence of any of the following events:

(a) The determination of the Board to dissolve the Company;

(b) An election to dissolve the Company made by holders of a majority of the Units;

(c) The sale, exchange, involuntary conversion, or other disposition or Transfer of all or substantially all the assets of the Company; or

(d) The entry of a decree of judicial dissolution under § 44 of the Massachusetts Act.

Section 13.02 Effectiveness of Dissolution. Dissolution of the Company shall be effective on the day on which the event described in Section 13.01 occurs, but the Company shall not terminate until the winding up of the Company has been completed, the assets of the Company have been Distributed as provided in Section 13.03 and the Certificate of Organization shall have been cancelled as provided in Section 13.04.

Section 13.03 Liquidation. If the Company is dissolved pursuant to Section 13.01, the Company shall be liquidated and its business and affairs wound up in accordance with the Massachusetts Act and the following provisions:

(a) **Liquidator.** The Board, or, if the Board is unable to do so, a Person selected by the holders of a majority of the Units, shall act as liquidator to wind up the Company (the "**Liquidator**"). The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner.

(b) **Accounting.** As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(c) **Distribution of Proceeds.** The Liquidator shall liquidate the assets of the Company and Distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of Applicable Law:

(i) *First*, to the payment of all of the Company's debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Company);

(ii) *Second*, to the establishment of and additions to reserves that are determined by the Board in its sole discretion to be reasonably necessary for any contingent unforeseen liabilities or obligations of the Company; and

(iii) *Third*, to the Members in the same manner as Distributions are made under Section 7.02.

(d) **Discretion of Liquidator.** Notwithstanding the provisions of Section 13.03(c) that require the liquidation of the assets of the Company, but subject to the order of priorities set forth in Section 13.03(c), if upon dissolution of the Company the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or could cause undue loss to the Members, the Liquidator may defer the liquidation of any assets except those necessary to satisfy Company liabilities and reserves, and may, in its absolute discretion, Distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.03(c), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such Distribution in kind will be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any Agreements governing the operating of such properties at such time. For purposes of any such Distribution, any property to be Distributed will be valued at its Fair Market Value.

Section 13.04 Cancellation of Certificate. Upon completion of the Distribution of the assets of the Company as provided in Section 13.03(c) hereof, the Company shall be terminated and the Liquidator shall cause the cancellation of the Certificate of Organization in the State of Massachusetts and of all qualifications and registrations of the Company as a foreign limited liability company in jurisdictions other than the State of Massachusetts and shall take such other actions as may be necessary to terminate the Company.

Section 13.05 Survival of Rights, Duties, and Obligations. Dissolution, liquidation, winding up, or termination of the Company for any reason shall not release any party from any Loss which at the time of such dissolution, liquidation, winding up, or termination already had accrued to any other party or which thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up, or termination. For the avoidance of doubt, none of the foregoing shall replace, diminish, or otherwise adversely affect any Member's right to indemnification pursuant to Section 14.03.

Section 13.06 Recourse for Claims. Each Member shall look solely to the assets of the Company for all Distributions with respect to the Company, such Member's Capital Account, and such Member's share of Net Income, Net Loss, and other items of income, gain, loss, and deduction, and shall have no recourse therefor (upon dissolution or otherwise) against the Board, the Liquidator or any other Member.

ARTICLE XIV. EXCULPATION AND INDEMNIFICATION

Section 14.01 Exculpation of Covered Persons.

(a) **Covered Persons.** As used herein, the term "**Covered Person**" shall mean (i) each Member, (ii) each officer, director, shareholder, partner, member, controlling Affiliate, employee, agent, or representative of each Member, and each of their controlling Affiliates, and (iii) each Manager, Officer, employee, agent, or representative of the Company.

(b) **Standard of Care.** No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage, or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in his, her, or its capacity as a Covered Person, so long as such action or omission does not constitute fraud or willful misconduct by such Covered Person.

(c) **Good Faith Reliance.** A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements (including financial statements and information, opinions, reports, or statements as to the value or amount of the assets, liabilities, Net Income, or Net Losses of the Company or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following Persons or groups: (i) another Manager; (ii) one or more Officers or employees of the Company; (iii) any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in § 11 of the Massachusetts Act.

Section 14.02 Liabilities and Duties of Covered Persons.

(a) **Limitation of Liability.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by Applicable Law, and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(b) **Duties.** Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person's "discretion" or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person. Whenever in this Agreement a Covered Person is permitted or required to make a decision in such Covered Person's "good faith," the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other Applicable Law.

Section 14.03 Indemnification.

(a) **Indemnification.** To the fullest extent permitted by the Massachusetts Act, as the same now exists or may hereafter be amended, substituted, or replaced (but, in the case of any such amendment, substitution, or replacement only to the extent that such amendment, substitution, or replacement permits the Company to provide broader indemnification rights than the Massachusetts Act permitted the Company to provide prior to such amendment, substitution, or replacement), the Company shall indemnify, hold harmless, defend, pay, and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines, or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines, or liabilities, and any amounts expended in settlement of any claims (collectively, "**Losses**") to which such Covered Person may become subject by reason of:

(i) Any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Member, or any direct or indirect Subsidiary of the foregoing in connection with the business of the Company; or

(ii) The fact that such Covered Person is or was acting in connection with the business of the Company as a partner, member, stockholder, controlling Affiliate, manager, director, officer, employee, or agent of the Company, any Member, or any of their respective controlling Affiliates, or that such Covered Person is or was serving at the request of the Company as a partner, member, manager, director, officer, employee, or agent of any Person including the Company or any Company Subsidiary;

provided, that (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud or willful misconduct, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud or willful misconduct.

(b) **Reimbursement.** The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend, or defending any claim, lawsuit, or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 14.03; *provided*, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 14.03, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(c) **Entitlement to Indemnity.** The indemnification provided by this Section 14.03 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any Agreement or otherwise. The provisions of this Section 14.03 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 14.03 and shall inure to the benefit of the executors, administrators, legatees, and distributees of such Covered Person.

(d) **Insurance.** To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Board may determine; *provided*, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

(e) **Funding of Indemnification Obligation.** Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 14.03shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

(f) **Savings Clause.** If this Section 14.03 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 14.03 to the fullest extent permitted by any applicable portion of this Section 14.03 that shall not have been invalidated and to the fullest extent permitted by Applicable Law.

(g) **Amendment.** The provisions of this Section 14.03 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 14.03 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification, or repeal of this Section 14.03 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification, or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

Section 14.04 Survival. The provisions of this Article XIV shall survive the dissolution, liquidation, winding up, and termination of the Company.

ARTICLE XV. MISCELLANEOUS

Section 15.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors, and accountants, incurred in connection with the preparation and execution of this Agreement, or any amendment or waiver hereof, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 15.02 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Company or any other Member, to execute and deliver such additional documents, instruments, conveyances, and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

Section 15.03 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 15.03) :

If to the Company: Agrify-Valiant, LLC

101 Middlesex Turnpike
Ste 6 PMB 327
Burlington, MA 01803

E-mail: [ ]
Attention: CFO

If to a Member, to such Member's respective mailing and/or email address as set forth on the Members Schedule.

Section 15.04 Headings. The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this Agreement.

Section 15.05 Severability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable under Applicable Law in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Subject to Section 11.02(d) , upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 15.06 Entire Agreement.

(a) This Agreement, together with the Certificate of Organization, and all related Exhibits and Schedules, constitutes the sole and entire Agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, Agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(b) In the event of an inconsistency or conflict between the provisions of this Agreement and any provision in any other agreement to which Company is a party, the Board shall resolve such conflict in its sole discretion.

Section 15.07 Successors and Assigns. Subject to the restrictions on Transfers set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

Section 15.08 No Third-party Beneficiaries. Except as provided in Article XIV, which shall be for the benefit of and enforceable by Covered Persons as described therein, this Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors, and assigns) and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 15.09 Amendment. No provision of this Agreement may be amended or modified except by an instrument in writing executed by the Company and Members holding a majority of the Units. Any such written amendment or modification will be binding upon the Company and each Member; *provided*, that an amendment or modification modifying the rights or obligations of any Member in a manner that is disproportionately adverse to such Member relative to the rights of other Members. Notwithstanding the foregoing, amendments to the Members Schedule following any new issuance, redemption, repurchase or Transfer of Units in accordance with this Agreement may be made by the Board without the consent of or execution by the Members.

Section 15.10 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. For the avoidance of doubt, nothing contained in this Section 15.10 shall diminish any of the explicit and implicit waivers described in this Agreement, including without limitation in Section 4.07(f), Section 8.04(c), Section 9.01(d), and Section 10.03(d)(v) hereof.

Section 15.11 Arbitration. In the event of any dispute, claim or controversy among the parties arising out of or relating to this Agreement or the Certificate of Organization, whether in contract, tort, equity or otherwise, and whether relating to the meaning, interpretation, effect, validity, performance or enforcement of this Agreement or the Certificate of Organization, such dispute, claim or controversy shall be resolved by and through an arbitration proceeding to be conducted under the auspices and the commercial arbitration rules of the American Arbitration Association (or any like organization successor thereto) at Boston, Massachusetts. The arbitrability of the dispute, claim or controversy shall likewise be determined in the arbitration. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the commercial arbitration rules (formal or informal) of the American Arbitration Association. Both the foregoing agreement of the parties to arbitrate any and all such disputes, claims and controversies, and the results, determinations, findings, judgments and/or awards rendered through any such arbitration shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

(b) Governing Law. The arbitrator(s) shall follow any applicable federal law and Massachusetts state law (with respect to all matters of substantive law) in rendering an award.

(c) Costs of Arbitration. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, each party's attorneys' fees and costs), shall be borne by the unsuccessful party or, at the discretion of the arbitrator(s), may be prorated between the parties in such proportion as the arbitrator(s) determines to be equitable and shall be awarded as part of the arbitrator's award.

Section 15.12 Equitable Remedies. Each party hereto acknowledges that a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

Section 15.13 Offset Privilege. Any monetary obligation owing from the Company to any Member or Manager may be offset by the Company against any monetary obligation then owing from that Member or Manager to the Company.

Section 15.14 Remedies Cumulative. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in Section 14.02 to the contrary.

Section 15.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

The Members:

Valiant America, LLC

By: /s/Eamonn O'Kane
Name: Eamonn O'Kane
Title: CEO

Agrify Corporation

By: /s/Mary Anne Squillace
Name: Mary Anne Squillace
Title: VP Finance

The Company:

Agrify-Valiant, LLC

By: /s/Raymond Chang
Name: Raymond Chang
Title: Chairman

EXHIBIT A
FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT
TO LIMITED LIABILITY OPERATING AGREEMENT

THIS JOINDER AGREEMENT TO OPERATING AGREEMENT of AGRIFY-VALIANT, LLC (this "Joinder Agreement") is executed and delivered this day of 20 by ("[NAME]") and is effective as of the date hereof. All capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Operating Agreement of Agrify-Valiant, LLC dated as of [DATE], as amended (the "Operating Agreement"), by and among the Members of Agrify-Valiant, LLC ("Company") as defined therein.

WHEREAS, [NAME] desires to purchase units, each representing a member interest of the Company (a "Member's Interest");

WHEREAS, in connection with the purchase of the Member's Interest, [NAME] must, among other things, become a party to the Operating Agreement;

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

[NAME] hereby acknowledges and agrees with the Company that he is a signatory and party to the Operating Agreement as of the date first written above and thus subject to all terms and conditions of the Operating Agreement applicable to each Member of the Company.

[Signatures on Following Page]

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

Company:
Agrify-Valiant, LLC

By: _____
Name:
Title:

Member:

[NAME]

By: _____
Name:
Title:

[EXAMPLE ONLY DO NOT EXECUTE]

SCHEDULE A
MEMBERS SCHEDULE

Member Name and Address	**Units**	**Initial Capital Contribution**
Agrify Corporation 101 Middlesex Turnpike, Suite 6, PMB 326, Burlington MA 01803 Email for notice: [ ]	60,000	60,000 USD
Valiant America, LLC PO Box 87141 S Dartmouth, MA 02748 Email for notice: [ ]	40,000	40,000 USD
Total:	100,000	100,000 USD

SCHEDULE B
MANAGERS SCHEDULE

Manager Name and Address

Exhibit 10.2

Pursuant to Item 601(b)(10) of Regulation S-K, certain confidential portions of this exhibit marked with brackets and asterisks have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Distribution Agreement

This Distribution Agreement (this "**Agreement**"), with an effective date of June 7, 2019 (the "**Effective Date**"), is entered into between BLUEZONE PRODUCTS, INC., a Delaware limited liability company ("**Seller**") and Agrinamics, Inc., a Nevada corporation ("**Distributor**," and together with Seller, the "**Parties**," and each, a "**Party**").

WHEREAS, Seller is in the business of manufacturing selling the Products (as defined below); and

WHEREAS, Distributor is in the business of marketing and reselling Products;

WHEREAS, Seller desires to sell the Products to Distributor and appoint Distributor as a distributor under the terms and conditions of this Agreement; and

WHEREAS, Distributor desires to purchase the Products from Seller and resell the Products to customers, subject to the terms and conditions of this Agreement,

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

1. Definitions.

"**Agreement**" has the meaning set out in the preamble and includes all schedules and exhibits hereto.

"**Confidential Information**" has the meaning set out under Section 11.

"**Customer**" means a purchaser that is an individual or entity located in the Territory that is acquiring a Product from Distributor for its own internal use in a) a containerized or vertical indoor cannabis growing facility using LED lighting, b) cannabis dispensary or c) cannabis processing facility.

"**Distributor**" has the meaning set out in the preamble.

"**Force Majeure Event**" has the meaning set out in Section 37.

"**Product**" means any Product that is identified in Schedule 1, as it may be revised pursuant to Section 4.4 from time to time.

"**Indemnified Party**" has the meaning set out under Section 17.1.

"**Party**" has the meaning set out in the preamble.

"**Seller**" has the meaning set out in the preamble.

"**Term**" has the meaning set out under Section 10.

"**Territory**" means North America.

2. Appointment.

2.1 Appointment. Seller hereby appoints Distributor, and Distributor hereby accepts the appointment, to act as an exclusive distributor of Products to Customers during the Term in accordance with the terms and conditions of this Agreement and subject to Seller's sales rights set forth below. Distributor shall not sell or offer to sell Products outside the Territory. By accepting this appointment, Distributor agrees to conform to all quality standards established from time to time by Seller. Distributor is required to purchase the following minimum number of Products from the Seller per year on the terms set forth herein:

June 1, 2019 to May 31, 2020 (Year 1)	[****] Product Units
June 1, 2020 to May 31, 2021 (Year 2)	[****] Product Units

The Distributor shall order at least [****]% of the minimum number of Products for the applicable twelve (12) month period and make the initial payments related to such order on the Effective Date and the anniversary of the Effective Date (6/1/19 and 6/1/20). Distributor shall order the remainder of the minimum number of Products for such period and make the initial payments related to such order for that year on or before September 30st of such year (9/30/19 and 9/30/20).

On the Effective Date, Distributor will place a purchase order for [****] Products and will place a purchase order for the remaining [****] Products on or before August 31, 2019.

Distributor's failure to honor the terms of this Section 2.1 constitutes a breach of this Agreement pursuant to Section 10.2. In addition to its right to terminate this Agreement, the Seller shall be entitled to damages equal to the sums it would have received if the Distributor purchased the required number of Products. Notwithstanding the foregoing, on Distributor's breach of this Section 2.1, it shall automatically lose all exclusive rights.

2.2 Seller Sales. Notwithstanding anything herein to the contrary, Seller shall be entitled to sell the Products as a Factory Sales Representative of the Distributor. In addition to the applicable price for the Product to which the Seller is entitled on a Distributor sale, the Seller shall be entitled to [****]% of the higher of (a) MSRP and (b) the gross sales price paid to the Distributor (for example, if the Distributor is paid $[****] for a Product, Seller shall receive a $[****] commission) in connection with any sales originated by the Seller including sales to current clients of the Seller. The Distributor shall provide Seller with an accounting and payment of all commissions earned within five (5) days following the end of each calendar month. The Distributor shall remain responsible for all Customer invoicing related to a Seller sale or lead.

3. Facilities, Inventory, and Marketing Obligations.

3.1 Distributor Obligations. Distributor shall:

(a) market, advertise, promote, and sell the Products to Customers in a manner that reflects favorably at all times on Products and the Product name, goodwill and reputation of Seller and consistent with good business practice, in each case using its best efforts to maximize the sales volume of the Products;

(b) maintain a place or places of business in the Territory, including adequate office, storage, and warehouse facilities and all other facilities as required for Distributor to perform its duties under this Agreement in a location or locations approved by Seller provided that if the Distributor does not have a suitable storage facility the Seller may provide storage at the Distributor's cost and Distributor shall pay such cost to the Seller monthly within five (5) days of demand;

(c) purchase and maintain at all times a representative quantity of each Product sufficient for and consistent with the Distributor's Customers' sales needs;

(d) have sufficient knowledge of the industry and products competitive with each Product (including specifications, features, and benefits) so as to be able to explain in detail to Customers:

(i) the differences between the Product and competing products;

and

(ii) information on standard protocols and features of each Product;

(e) observe all directions and instructions given to it by Seller in relation to the marketing, advertisement, and promotion of the Products, including Seller's sales, marketing, and merchandising policies as they currently exist or as they may hereafter be changed by Seller;

(f) not use any promotional and marketing materials, whether prepared by Distributor or others, without the prior written consent of Seller.

(g) establish and maintain a sales and marketing organization sufficient to develop to the satisfaction of Seller the market potential for the sale of the Products, and independent sales representatives, facilities, and a distribution organization sufficient to make the Products available for shipment by Distributor to each Customer immediately on receipt of order;

(h) develop and execute a marketing plan sufficient to fulfill its obligations under this Agreement;

(i) not make any materially misleading or untrue statements concerning Seller or the Products, including any product disparagement or "bait-and-switch" practices;

(j) promptly notify Seller of any complaint or adverse claim about any Product or its use of which Distributor becomes aware;

(k) submit to Seller complete and accurate monthly reports regarding inventory, marketing, and sales of the Products in a computer-readable format and containing the scope of information acceptable to Seller, maintain books, records, and accounts of all transactions and permit full examination thereof by Seller in accordance with Section 9;

(l) not resell Products to any federal, state, local, or foreign government or political subdivision or agency thereof, without express written approval from Seller; and

(m) on request, provide Seller with a written survey of the current and three-month forecast of demand for the Products in the Territory, especially in relation to similar or competing products; and

(n) obtain Seller's prior written consent of all installation methods, accessories and details if the customer is using a third party installer.

3.2 Seller Obligations. Seller shall:

(a) provide any information and support that may be reasonably requested by Distributor regarding the marketing, advertising, promotion, and sale of Products including specifications, marketing materials, test reports, installation guidelines, product manuals, and general sales training;

(b) provide brand guidelines to use in the creation of any additional marketing materials, sales brochures, conference materials, booth displays, advertisement or other placements (provide the same shall be subject to Seller's prior written approval);

(c) allow Distributor to participate, at its own expense, in any marketing, advertising, promotion and sales programs or events that Seller may make generally available to its authorized distributors of Products in the Territory;

(d) approve or reject, in its discretion, any promotional information or material submitted by Distributor for Seller's approval; and

(e) provide demonstration testing prior to sale subject to a service fee.

4. Agreement to Purchase and Sell Products.

4.1 Terms of Sale; Orders. Seller shall make available and sell Products to Distributor at the prices under Section 4.2 and on the terms and conditions set out in this Agreement.

4.2 Price. The prices for Products sold under this Agreement shall be as per Schedule 1. Subject to Section 6:

(a) all prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Distributor under this Agreement;

(b) Distributor is responsible for all charges, costs, and taxes; and

(c) Distributor shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable Law.

Distributor shall perform its obligations under this Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed or payable by Seller, whether relating to Seller's or Seller's affiliates' breach, bankruptcy, or otherwise and whether under this Agreement, any purchase order, any other agreement between (i) Distributor or any of its affiliates and (ii) Seller or any of its affiliates, or otherwise.

4.3 Payment Terms. Seller shall issue an invoice to Distributor for each order. Distributor shall pay [****]% of the invoiced amount within three (3) days of receipt of the invoice. The remaining balance shall be due on receipt of the Products. The Products shall be deemed received on the earlier of (a) pick up from the Seller's warehouse and (b) five (5) business days after Seller notifies Distributor that the Products are ready for pickup.

Distributor shall make all payments in US dollars by check or wire transfer, in accordance with the following wire instructions:

ABA Number: [****]

Account Number: [****]

Bank Address:

4.4 Availability/Changes in Products. On reasonable advance notice Seller may, in its sole discretion, add or make changes to Products on notice to Distributor.

5. Orders Procedure.

5.1 Orders. Distributor shall issue all purchase orders to Seller in written form via facsimile, e-mail, or US mail. By placing an order, Distributor makes an offer to purchase Products under the following commercial terms listed in the purchase order and the terms and conditions of this Agreement, and on no other terms:

(a) the listed Products to be purchased;

(b) the quantities ordered; and

(c) the requested delivery date.

The Seller's invoice will include an estimated delivery date.

Any variations made to the terms and conditions of this Agreement by Distributor in any order are void and have no effect.

5.2 Seller's Right to Accept or Reject Orders. Seller may, in its sole discretion, accept or reject any order. Seller may accept any order by confirming the order (whether by written confirmation, invoice, or otherwise) or by delivering the Products, whichever occurs first. No order is binding on Seller unless accepted by Seller as provided in this Agreement.

6. Shipment and Delivery.

6.1 Shipment and Delivery. Distributor shall arrange for shipping from the Seller's location to its warehouse and the customer at its sole cost and expense. Seller shall not be responsible for shipping logistics or any charges related to shipping. Distributor shall pick up ordered Products within five (5) business days of receipt of notice from Seller that the order is ready for pick up. Seller shall be entitled to charge Distributor for storage of any Products not picked up within this time frame.

6.2 Title and Risk of Loss. Title and risk of loss passes to Distributor on payment. As collateral security for the payment of the purchase price of the Products, Distributor hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Distributor in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Massachusetts Uniform Commercial Code.

6.3 Inspection and Acceptance of Products. Distributor shall inspect Products received under this Agreement. On the thirtieth (30th) day after delivery of the Products, Distributor shall be deemed to have accepted the Products unless it earlier notifies Seller in writing and furnishes written evidence or other documentation as reasonably required by Seller that the Products are damaged, defective, or otherwise do not conform to Seller's specifications. If Distributor notifies Seller pursuant to this Section 6.3, then Seller shall determine, in its sole discretion, whether to repair or replace the Products or refund the price for the Products.

Distributor shall ship at its expense and risk of loss, all Products to be returned, repaired, or replaced under this Section 6.3 to Seller's facility located in Woburn, Massachusetts. If Seller exercises its option to replace the Products, Seller shall, after receiving Distributor's shipment of the Products under this provision, ship to Distributor, at Seller expense and risk of loss, the replacement Products. Distributor acknowledges and agrees that the remedies set out in this Section 6.3 are exclusive of all other remedies, subject to Distributor's rights under Section 12 regarding any Products for which Distributor has accepted delivery under this Section 6.3.

Except as provided under this Section 6.3 and Section 12, all sales of Products to Distributor under this Agreement are made on a one-way basis and Distributor has no other right to return Products purchased under this Agreement.

7. Seller's Trademark License Grant. Subject to the terms and conditions of this Agreement, Seller hereby grants to Distributor a non-exclusive, non-transferable, and non- sublicensable license in the Territory during the Term solely on or in connection with the promotion, advertising, and resale of the Products in accordance with the terms and conditions of this Agreement to use all Seller's trademarks set forth on Schedule 2, whether registered or unregistered, including the listed registrations and applications and any registrations, which may be granted pursuant to such applications. On expiration or earlier termination of this Agreement or upon Seller request, Distributor shall promptly discontinue the display or use of any trademark or change the manner in which it is displayed or used with regard to the Products. Upon expiration or earlier termination of this Agreement, Distributor's rights under this Section 7 shall cease immediately. Other than the express licenses granted by this Section 7, Seller grants no right or license to Distributor, by implication, estoppels, or otherwise, to the Products or any intellectual property rights of Seller or its affiliates.

8. Resale Prices. Distributor is required to adhere to the resale prices set forth on Schedule 1.

9. Audit and Inspection Rights. During the term of this Agreement, on request and during regular business hours, Seller or its representatives may at its own expense reasonably inspect Distributor's facility(ies) and audit Distributor's books, records, and other documents as necessary to verify compliance with the terms and conditions of this Agreement.

10. Term; Termination.

10.1 Term. The term of this Agreement commences on the Effective Date and terminates on May 31, 2021, and shall thereafter renew for additional successive one (1) year terms unless and until either Party provides notice of nonrenewal at least sixty (60) days before the end of the then-current term, or unless and until earlier terminated as provided under this Agreement or applicable law (the "**Term**"). Any renewal shall be conditioned on the Parties reaching agreement on or before the expiration of the then current Term regarding the minimum purchase requirements of Distributor and pricing. If either Party provides timely notice of its intent not to renew this Agreement, then unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

10.2 Termination Rights. Notwithstanding anything to the contrary in this Agreement, either Party may terminate this Agreement and the appointment of Distributor under Section 2, for any or no reason, at any time upon written notice to the other Party, and said termination shall become effective ninety days following the delivery of such notice, except where a shorter period is provided for in this Agreement. In addition to any remedies that may be provided in this Agreement, Seller may immediately terminate this Agreement (including all related purchase orders pursuant to Section 10.3(a)), upon notice to Distributor if Distributor:

(a) fails to pay any amount when due under this Agreement or to timely make all required orders and purchases;

(b) breaches any obligation with regard to confidentiality or intellectual property as set forth in this Agreement;

(c) breaches this Agreement (other than a monetary breach or a breach related to its obligations of confidentiality and intellectual property) and either the breach cannot be cured or, if the breach can be cured, it is not cured within ten (10) business days following Seller's receipt of notice of such breach;

(d) if Distributor:

(i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;

(ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;

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

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

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

10.3 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement:

(a) All related purchase orders are automatically terminated; and

(b) Distributor shall cease to represent itself as Seller's authorized distributor regarding the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe that Distributor is authorized by Seller to sell the Products;

(c) Distributor shall promptly return all:

(i) documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Confidential Information; and

(ii) products that Seller provided to Distributor that are not intended for resale.

10.4 Option to Repurchase. Within thirty ten (10) days after the effective date of expiration or earlier termination, Distributor shall submit to Seller a written schedule reflecting all Products then owned by Distributor or in the Distributor's possession. Upon notice within ten (10) days following its receipt of such schedule from Distributor, Seller shall have the right, but not the obligation, to buy back all or a portion of such Products, free of all liens, claims or encumbrances, at a price equal to Distributor's cost therefor and the then-prevailing price, pursuant to the following procedures. Distributor shall promptly deliver, at Distributor's reasonable expense, the repurchased Products (unmodified and undamaged) to Seller. Seller has the right to set off or recoup any liability it owes to Distributor under this Section 10.4 against any liability for which Distributor is liable to Seller, whether either liability is matured or unmatured, is liquidated or unliquidated or arises under this Agreement.

11. Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Distributor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Distributor shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is:

(a) in the public domain;

(b) known to Distributor at the time of disclosure; or

(c) rightfully obtained by Distributor on a non-confidential basis from a third party.

12. Limited Product Warranty; Disclaimer. Seller warrants that the Products are free from defects in material and workmanship under normal use and service with proper maintenance for twenty-four months. The term for such warranties shall begin upon Customer's receipt of the Product. Distributor or Customer shall promptly notify Seller of any known warranty claims and shall cooperate in the investigation of such claims. If any Product is proven to not conform with this warranty during the applicable warranty period, Seller shall, at its exclusive option, either repair or replace the Product or refund the purchase price paid by Distributor for each non- conforming Product.

13. Seller shall have no obligation under the warranty set forth above if Distributor or Customer:

(a) fails to notify Seller in writing during the warranty period of a non- conformity; or

(b) uses, misuses, or neglects the Product in a manner inconsistent with the Product's specifications or use or maintenance directions, modifies the Product or improperly installs, handles or maintains the Product; or

(c) uses an installer other than the Seller.

14. Except as explicitly authorized in this Agreement or in a separate written agreement with Seller, Distributor shall not service, repair, modify, alter, replace, reverse engineer, or otherwise change the Products it sells to Customers. Distributor shall not provide its own warranty regarding any Product.

15. EXCEPT FOR THE WARRANTIES SET OUT UNDER SECTION 12, NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES FOR DISTRIBUTOR'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; OR (iii) NON- INFRINGEMENT; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. DISTRIBUTOR ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.

16. Compliance With Laws. Distributor shall at all times comply with all federal, state and local laws, ordinances, regulations and orders that are applicable to the operation of its business, and this Agreement and its performance hereunder. Without limiting the generality of the foregoing, Distributor shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses, and permits necessary to conduct its business relating to the exercise of its rights and the performance of its obligations under this Agreement.

17. Indemnification.

17.1 Indemnification. Subject to the terms and conditions of this Agreement, Distributor shall indemnify, hold harmless, and defend Seller and its parent, officers, directors, partners, members, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, relating to any claim of a third party or Seller arising out of or occurring in connection with:

(a) Distributor's acts or omissions as Distributor of the Products, including breach of this Agreement;

(b) Distributor's advertising or representations that warrant performance of Products beyond that provided by Seller's written warranty or based upon Distributor's business or trade practices;

(c) any failure by Distributor or its personnel to comply with any applicable Laws; or

(d) allegations that Distributor breached its agreement with a third party as a result of or in connection with entering into, performing under or terminating this Agreement.

18. Limitation of Liability. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT:

(a) IS SELLER OR ANY SELLER REPRESENTATIVE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF:

(i) WHETHER THE DAMAGES WERE FORESEEABLE;

(ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND

(iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) ON WHICH THE CLAIM IS BASED.

(b) SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO SELLER UNDER THIS AGREEMENT IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

19. THE FOREGOING LIMITATIONS APPLY EVEN IF THE DISTRIBUTOR'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

20. Insurance. From and after the execution of this Agreement and continuing for three (3) years after its termination, Seller and Distributor shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than $[****] for each occurrence, $[****] in the aggregate and $[****] in excess commercial liability coverage, all with financially sound and reputable insurers. Upon Seller's request, Distributor shall provide Seller with a certificate of insurance and policy endorsements for all insurance coverage required by this Section 20, and shall not do anything to invalidate such insurance. The certificate of insurance shall name Seller as an additional insured. Distributor shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in Distributor's insurance policy. Except where prohibited by law, Distributor shall require its insurer to waive all rights of subrogation against Seller's insurers, Seller and the other Indemnified Parties.

21. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The terms of this Agreement prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Distributor's general terms and conditions contained in any purchase order or other document issued by Distributor (excluding the information set out in Section 5.1(a) - Section 5.1(c)).

22. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement, as well as any other provision that, in order to give proper effect to its intent, shall survive the expiration or earlier termination of this Agreement. All other provisions of this Agreement shall not survive the expiration or earlier termination of this Agreement.

23. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested and postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

Notice to Seller: BLUEZONE PRODUCTS, INC.
225 Wildwood Avenue
Woburn, MA 01801
Attention:

Notice to Distributor:

Attention:

24. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the court may modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

25. Amendments. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

26. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

27. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Distributor's rights under Section 6.3 and Section 12 are Distributor's exclusive remedies for the events specified therein.

28. Assignment. Distributor shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Distributor of any of its obligations hereunder. Seller may at any time assign, transfer, or subcontract any or all of its rights or obligations under this Agreement without Distributor's prior written consent.

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

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

31. The Parties hereby designate Indemnified Parties as third-party beneficiaries of Section 17 with the right to enforce this provision.

32. Choice of Law. This Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts.

33. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the state and federal courts located in Middlesex County, Massachusetts. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in Middlesex County, Massachusetts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

34. Attorneys' Fees. Each Party shall be entitled to recover attorneys' fees and costs if it is the prevailing party in any claim brought hereunder.

35. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

36. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 23, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

37. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control (which events may include natural disasters, embargoes, explosions, riots, wars or acts of invasion or terrorism, requirements of law, national or regional emergency, strikes, labor stoppages or slowdowns (each, a "**Force Majeure Event**"). A Party shall give the other Party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. An affected Party shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized, and resume full performance under this Agreement.

38. No Franchise or Business Opportunity Agreement. The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Seller and Distributor. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Distributor has the sole discretion to determine Distributor's methods of operation, Distributor's accounting practices, the types and amounts of insurance Distributor carries, Distributor's personnel practices, Distributor's advertising and promotion, its Customers, and Distributor's service areas and methods. The relationship created hereby between the parties is solely that of seller and distributor. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then Seller may immediately terminate this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

BLUEZONE PRODUCTS, INC.

By: _____

By: _____

AGRIFY CORPORATION

By: _____
Name: _____
Title: _____

SCHEDULE 1

Product and Pricing

Model 420 (the "**Product**")

MSRP: $[****] USD per Product

	Price per Product
Year One	$ [****]
Year Two (Subject to satisfaction of order volume and timing requirements)	$ [****]

SCHEDULE 2

Trademarks

BLUEZONE (WORD MARK) REG. NO. 4233579

BLUEZONE (& DESIGN) REG. NO. 4233496

Pursuant to Item 601(b)(10) of Regulation S-K, certain confidential portions of this exhibit marked with brackets and asterisks have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.

DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (the "Agreement"), dated as of March 9, 2020 is entered into between ENOZO TECHNOLOGIES INC., a Delaware corporation ("Seller"), and AGRIFY CORPORATION (collectively with any of its affiliates and representatives "Distributor"), hereinafter sometimes collectively referred to as "Parties" or individually as "Party".

1. Non-Exclusive and Exclusive Appointment Seller hereby appoints Distributor, and Distributor hereby accepts the appointment, to act as a non-exclusive or exclusive distributor of the products as set forth on Exhibit B attached hereto (the "Products") to customers in world (the "Territory") during the Term, as defined herein, in accordance with the terms and conditions of this Agreement. For exclusive products, this exclusivity is for sales in the Agricultural Market defined as any cultivation, processing, distribution, or sale of plants, fruits, cannabis, or vegetation for personal or commercial purposes.

2. Distributor Obligations. Distributor shall (a) use commercially reasonably efforts to maximize the sales volume of the Products through marketing, advertising, promoting, and selling the Products to Customers (as defined herein); (b) maintain adequate office, storage, and warehouse facilities required for Distributor to perform its duties under this Agreement; (c) create and maintain commercial strategies for the marketing of the Products and coordinate such efforts with the Seller; (d) promptly notify Seller of any complaint or adverse claim about any Product; and (e) at its sole expense, provide adequate customer support via telephone, email, or other reasonable means for basic use and operations questions from end-users regarding the Products and refer other questions to Seller or its designated affiliate, as set forth in the troubleshooting flow charts attached hereto as Exhibit A. Distributor will be provided with a list of allowable Marketing Claims (Defined as those claims of product use, biological kill, or other effects of using the product). Distributor represents and warrants that the Marketing Claims shall be materially true and not misleading for the applicable products and during the time frames such Marketing Claims are to be used as directed by Distributor. No Marketing Clams other than those allowable are to be used in any materials available to the public without the explicit written agreement of Enozo Technologies Inc. Nothing contained herein shall restrict Distributor from having the right to obtain or retain the rights to resell any other goods, including goods that may compete with the products set forth herein. "Customer" means a purchaser that is (a) a reseller located in the Territory who purchases Seller products for resale to End Users or (b) an End User. "End User" means the final purchaser that (a) has acquired a Seller product from Distributor for its own and its Affiliates' internal use and not for resale, remarketing, or distribution and (b) is an individual or entity.

3. Purchase and Sale. Distributor shall purchase the Products from Seller for its own account. The prices for Products sold under this Agreement are set forth in Exhibit B (the "Sale Price"). Payment terms per product are set forth in Exhibit B, and are due and payable within 30 days of invoice. Overdue payments on undisputed charges will be charged with a one percent (1%) interest charge per month.

4. Minimum Purchases. Distributor must buy the guaranteed minimum volumes as specified below to maintain the exclusive arrangement for the Wand product.

4.1 Minimum Wand Purchases between the Effective Date and December 31, 2021 shall be [****] units

4.2 Minimum Wand Purchase in calendar year 2022 shall be [****] units

4.3 Minimum Wand Purchase in calendar year 2023 shall be [****] units

4.4 Thereafter, Minimum Wand Purchase may be increased by no more than [****]% a year, upon written notice from Seller to Distributor. Any such written notice shall be delivered to Distributor at least thirty (30) days before the end of the then-current year, stating the Minimum Wand Purchase amount for the preceding year.

4.5 Distributor sales above the Minimum Wand Purchase amount in any time period shall be credited towards Minimum Wand Purchase obligations for any subsequent year or years.

4.6 Distributor shall have the right to purchase Wand Products prior to the end of any time period described herein, and have such quantities satisfy any remaining Minimum Wand Purchase obligation for such time period.

4.7 Should the distributor fail to meet the minimum specified annual quantities, and at the sole discretion of the Seller, the exclusive license for the Wand shall revert to either a non-exclusive license or the license may be terminated.

5. Resale. Distributor shall sell the Products and unilaterally establish its resale prices (the "Resale Prices"). However, Distributor may not Advertise the product Sales Price, anywhere or at anytime, below the Minimum Advertised Price listed in Exhibit B for the current manufacturer's suggested retail price for the Products (the "MSRP"). Seller may change the MSRP for the Products in its sole discretion upon 180 days' written notice to Distributor. Additionally, Distributor shall adhere to the Minimum Advertised Price Policy set forth in Exhibit B.

6. Distributor Orders. Distributor shall issue all purchase orders to Seller in written form via facsimile, e-mail, or mail. All purchases shall be made on the following terms: (i) amounts due for any product shall be payable on net 30 terms after Seller's invoice date, which shall be issued on or after the date of product shipment (ii) for each product, Seller retains a security interest in such product until it is fully paid, and (iii) Distributor shall be charged a late fee of One and a Half Percent (1.5%) per month on any undisputed amounts owed and not timely paid. By placing an order, Distributor makes an offer to purchase Products under the commercial terms listed in the purchase order and the terms and conditions of this Agreement. In the event of a conflict between the preceding terms and conditions, the terms and conditions of this Agreement shall take precedence. Without limitation of anything contained in this Section 6, any additional, contrary, or different terms contained in any confirmation, invoices, or other communications, and any other attempt to modify, supersede, supplement, or otherwise alter this Agreement, are deemed rejected and will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized representatives of both Parties.

7. Seller's Acceptance or Rejection of Orders. Seller agrees to supply Distributor with Distributor's quantity requirements for the Wand Products, unless Seller can reasonably demonstrate to Distributor that Seller is prevented from accepting such order or orders due to circumstances outside of Seller's control. For all other Products, Distributor shall make reasonable commercial efforts to accept each and every of Distributor's orders for such Products. Seller shall accept any order by confirming the order (whether by written confirmation, invoice, or otherwise) or by delivering the Products, whichever occurs first. If Seller does not accept the order under the terms of this Section 7 within ten (10) days of Seller's receipt of the order, the order will be deemed accepted.

8. Shipment and Delivery; Title and Risk of Loss. Unless expressly agreed to by the Parties in writing, Seller will ship the Products FOB as set forth in the respective purchase order. Unless otherwise noted, the FOB will be Boston, Massachusetts. Title and risk of loss for the Products shall pass to Distributor when the Products are in the Distributor's possession or under its control in accordance with shipping terms. As collateral security for the payment of the Sale Price, Distributor hereby grants to Seller a lien on and security interest in and to all of its right, title and interest in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Distributor or Distributor's customer or end user shall inspect the delivered Products promptly upon receipt and notify Seller in writing of any defects promptly after inspection or after discovery, as the case may be. Failure to do so shall mean that Products are accepted. Nothing herein shall be construed to relieve Seller of any obligations under Section 12 or 13 herein.

9. Intellectual Property. Distributor may use its own trademarks, trade names, labels, designs, and colors for the purpose of branding, promotion, advertising, and resale of the Products in accordance with the terms and conditions of this Agreement (the "Distributor IP"). Seller grants no right or license to Distributor, by implication, estoppels, or otherwise, to the Products or any intellectual property rights of Seller or its affiliates. Notwithstanding the foregoing, Distributor may use Seller's trademarks and marketing materials for promoting the Products. Distributor shall make commercially reasonable efforts to conform with Seller's trademark guidelines as provided to Distributor in writing. Other than the Distributor IP, any Seller intellectual property rights in connection with the Products (particularly patents, utility models) and any derivatives therefrom (the "Seller IP") are and shall remain the sole property of Seller or any of its affiliates. Unless otherwise agreed to in writing, Distributor shall at no time take any action that may infringe upon any Seller IP.

10. Term. The term of this Agreement commences on the date set out in the preamble of this Agreement and continues for a period of five (5) years (the "Initial Term"), and shall thereafter renew for additional successive one (1) year terms unless and until (i) either Party provides notice of nonrenewal at least ninety (90) days before the end of the then-current term, or (ii) earlier terminated as provided under this Agreement or applicable law (the Initial Term with any renewal terms being collectively referred to herein as the "Term").

11. Confidential Information. All non-public, confidential or proprietary information of either party, including, but not limited to, specifications, designs, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by one party to the other in any manner is confidential, solely for the use of performing this Agreement and may not be disclosed unless authorized by the disclosing party in writing. Upon the disclosing party's request, the receiving party shall promptly return all documents and other materials received from the disclosing party. The disclosing party shall be entitled to seek injunctive relief for any violation of this Section.

12. Limited Product Warranty. Seller warrants to Distributor that:

12.1 for a period of [****] months from the date of initial delivery of the product to any End User (the "Warranty Period"), such product (i) will materially conform with the specifications in Exhibit C and documentation provided with the product, and (ii) will be free from significant defects in material and workmanship;

12.2 no claim, lien, or action exists or is threatened against Seller that would interfere with the marketing, use, or sale of the Products;

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

12.4 the Goods are new and do not contain used or reconditioned parts.

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

13. Remedies for Breach of Warranties. During the Warranty Period, if products do not comply with the warranties in this Agreement, in addition to other remedies available at Law or in this Agreement, Seller shall, at Seller's discretion:

13.1 repair or replace such products; or

13.2 render a return credit for such products equal to the purchase price paid by Distributor for such products, plus any inspection, test, and transportation charges paid by Distributor, less any applicable discounts, rebates, or credits.

14. Recalls. If Distributor, Seller, or any Governmental Authority determines that any products sold to Distributor are defective and a recall campaign is necessary, may implement such recall campaign. Distributor's right to implement a recall campaign is conditioned upon Distributor having evidenced that the relevant product has a failure rate of at least [****]% of the goods sold in the preceding twelve months. Distributor must return defective products to Seller, at Seller's sole cost and risk. Without prejudice to Distributor's rights under Section 12 and Section 13, if a recall campaign is implemented, and Seller's sole cost, Seller shall promptly either repair or replace, or credit or refund prices for, all such returned products under the terms of Section 12 and Section 13.

15. No Other Warranty. SUBJECT TO SECTION 12 AND 13 OF THIS AGREEMENT NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES FOR DISTRIBUTOR'S BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (i) MERCHANTABILITY; (ii) FITNESS FOR A PARTICULAR PURPOSE; OR (iii) NON-INFRINGEMENT; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. DISTRIBUTOR ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.

16. Limited Liability. SUBJECT TO SECTIONS 9, 12, AND 13, IN NO EVENT IS EITHER PARTY OR ANY RESPECTIVE PARTY'S REPRESENTATIVE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (I) WHETHER THE DAMAGES WERE FORESEEABLE; (ii) WHETHER OR NOT A PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (iii) THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM IS BASED.

17. Compliance With Laws; Insurance. Each party shall at all times comply with all material federal, state and local laws, ordinances, regulations and orders that are applicable to the operation of its business, this Agreement and its performance hereunder. Each party shall, at its own expense, maintain and carry insurance in full force and effect in such amounts as are prudent and customary in the businesses in which such party is engaged.

18. Exclusive Product Pricing Protection. Seller represents and warrants that the Prices for each exclusive product set forth on Appendix A are at least as low as the price charged by Seller to other buyers for the same products or similar products in similar quality purchases. If, at any time during the Term, Seller charges any other buyer a lower price for the same product or similar product, Seller shall apply that price to all such same products under this Agreement. If Seller fails to meet the lower price, Distributor may, at its option, in addition to all of its other rights under this Agreement or at law, terminate this Agreement without liability. The Parties shall reflect any adjustment to pricing under this Section in an amendment to Appendix A; provided, however, that, notwithstanding anything in this Agreement to the contrary, the execution and delivery of any such amendment by each of the Parties will not be a condition to the effectiveness of such Price adjustment.

19. Effect of Termination or Expiration. Unless Distributor directs otherwise, any termination of this Agreement by Distributor automatically terminates all related purchase orders.

19.1 Upon the expiration or earlier termination of this Agreement:

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

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

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

20. Post-Term Resale Period. On the expiration or earlier termination of this Agreement, Distributor may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Seller products for a period of Twelve (12) months following the last day of the Term (the "Post-Term Resale Period").

21. Miscellaneous. Each Party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by email to the email address for the party noted on the signature block of this Agreement or maintained in the other Party's records for the receiving Party, or by recognized overnight courier service, and addressed to the other Party at the addresses set forth above on the signature page hereto. This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed in accordance with, the laws of Delaware, without giving effect to any conflict of laws provisions thereof. In the event of any dispute, controversy or claim arising out of or in relation to this Agreement, the Parties hereto shall consult and negotiate with each other in good faith to reach a solution satisfactory to both parties. In case such solution is not reached within a period of sixty (60) days, any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be within 25 miles of Burlington, Massachusetts. The arbitration shall be governed by the laws of the State of Delaware. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. In making determinations regarding the scope of exchange of electronic information, the arbitrator(s) and the parties agree to be guided by *The Sedona Principles, Third Edition: best practices, recommendations & principles for addressing electronic document production*. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The prevailing party shall be entitled to an award of reasonable attorney fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Except as provided herein, the Parties may not amend this Agreement except by written instrument signed by the Parties. No waiver of any right, remedy, power, or privilege under this Agreement ("Right(s)") is effective unless contained in a writing signed by the Party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right. The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. Distributor may not directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this Agreement, voluntarily or involuntarily, except in connection with a change of control, merger (whether or not such party is the surviving entity), or operation of law, without the prior written consent of the Seller. Except as expressly provided herein, any purported assignment in violation of this Section shall be null and void. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. Except for the Parties, their successors and permitted assigns, there are no third-party beneficiaries under this Agreement. This Agreement may be executed in counterparts. Counterparts may be delivered via facsimile, electronic mail (including pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

22. The Parties are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, employment, partnership, agency relationship, business opportunity, or franchise between Seller and Distributor. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of its personnel under this Agreement and will be solely responsible for their supervision, daily direction, and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Distributor has the sole discretion to determine Distributor's methods of operation, Distributor's accounting practices, the types and amounts of insurance Distributor carries, Distributor's personnel practices, Distributor's advertising and promotion, Distributor's customers, and Distributor's service areas and methods. The relationship created hereby between the parties is solely that of supplier and distributor. If any provision of this Agreement is deemed to create a franchise or business opportunity relationship between the parties, then the parties shall negotiate in good faith to modify this Agreement so as to effect the parties' original intent as closely as possible in a mutually acceptable manner so that the transactions contemplated hereby be consummated as a distribution agreement and not a franchise or business opportunity agreement.

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

SELLER:

ENOZO TECHNOLOGIES INC.

By: _____

Name: _____

Title: _____

Address: 300 Willow Street
North Andover, MA 01845

DISTRIBUTOR:

AGRIFY CORPORATION

By: _____

Name: Niv Krikov

Title: Vice President of Finance

Address: 1600 District Ave., Suite 106,
Burlington, MA 01803
or
legal@agrify.com

EXHIBIT A

TROUBLE SHOOTING FLOW CHARTS

ATTACHED

EXHIBIT B

PRODUCT	EXCLUSIVITY TERMS	SALE PRICE PER UNIT	PAYMENT TERMS	MSRP PER UNIT
EnozoPro ISB	Non-Exclusive for all uses	$[****] USD	FOB, Boston, MA	$[****] USD
AgriWand*	Exclusive in the Agriculture Market; Non-Exclusive for all other uses	$[****] USD	FOB, Boston, MA	Not Applicable

*For purposes of this Agreement, "AgriWand" shall mean each and every of a back-pack style product, or other Supplier product with a wand applicator the production of which will not require new certifications, new tooling, or new third party validations. Supplier shall update this Exhibit A from time to time notifying Distributor of any new products introduced by Seller within this definition. Notwithstanding anything in this Agreement to the contrary, such additional products shall be deemed included in this Agreement upon Seller's first commercial offer to sell such product or products to any party, without modification to this Exhibit A to include such new product.

EXHIBIT C

PRODUCT DATA SHEETS

ATTACHED

Exhibit 10.4

Pursuant to Item 601(b)(10) of Regulation S-K, certain confidential portions of this exhibit marked with brackets and asterisks have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Agrify Corporation Binding Term Sheet
For Purchase Agreement
To 4D Bios, Inc.

This term sheet (the "**Term Sheet**") sets forth the binding terms and conditions for certain equipment purchases between 4D Bios, Inc. ("**Supplier**") and Agrify Corporation, a Nevada corporation ("**Company**").

Parties:	"**Supplier**": 4D Bios, Inc. "**Company**": Agrify Corporation
Agreement:	Company and Supplier will agree to one or more purchase orders for certain hardware products manufactured by 4D Bios, Inc. as more particularly described herein.
Covered Products:	Horticultural lights manufactured by Supplier ([****]) and sold by Agrify as "Model R" lights (each light a "Unit") that is currently Agrify's part number [****], and that complies with the requirements set forth in the then-applicable Agrify "Source Control Drawing."
Covered Customers; Term:	All Units sold to Agrify customers during the term of the Agreement. This Agreement shall be effective as of July 10, 2020 (the "Effective Date") and cover all purchases by Company until December 31, 2020.
Supplier-Company Terms:	Supplier will sell Units to Company on the following terms: a) Supplier will sell Units to Company at $[****] USD per Unit ("Supplier Cost"), b) Company will be responsible for all duties, tariffs, shipping, any insurance costs, and all other direct costs for Units from Supplier's place of manufacture to Company's location or other location designated by Company ("Company Cost"), c) "Total Cost" for a Unit shall mean Supplier Cost plus Company Cost attributable to such Unit, Supplier shall be paid for Units as follows: d) No payment to Supplier shall be due upon Supplier's acceptance of a Company Purchase Order for Units; e) Company shall pay Supplier $[****] USD per Unit upon notice by Supplier that all of the ordered Units will be delivered within [****] weeks. f) Company shall pay Supplier an additional $[****] USD per Unit upon notification of the Units be ready to ship for the Units ordered in a PO. The remainder of purchase price funds received by Company for such Units shall be applied towards Company's Cost for such Units, then

For Units procured through a payment plan (e.g., payments 2, 3, etc.):

g) Any subsequent purchase price amounts received by Company for such Units shall be paid in an amount proportionate to each party's remaining Cost associated with such Unit, until the Total Cost amount has been received, then

h) The net profits from sales of Units shall be evenly shared by Company and Supplier thereafter.

i) Payment schedule and allocations. The Supplier shall receive the second payment within [****] months of shipment and the third payment within [****] months of shipment. The amounts are as follows. If the Company Cost are different from listed below, the payment allocations can be adjusted. Both parties agree that if the second payment and/or third payment are not received, each party will share the risk equally.

[****]

When there is a full purchase price upfront sales agreement for the Units, Supplier shall be paid a total of $[****] per Unit ("Supplier Profit Price"), with amounts already paid to Supplier for such Unit deducted from the Supplier Profit Price, within thirty (30) business days of Company receiving purchase price amounts or within ninety (90) days of the shipment from Supplier's factory whichever comes first.

The Company is required to order a minimum quantity of [****] Units by December 31, 2020 and is required to pay Supplier the Supplier Cost for those number of Units not ordered.

In the event that Company does not order at least [****] Units by December 31, 2020, then Company shall pay Supplier an amount equal to $[****] USD per Unit that has been received and accepted by Company under this Agreement, excluding those Units where the Supplier Profit Price has been paid.

Upon request, Company shall provide to Supplier 1) a copy of each Customer purchase order and/or sales document of Company that pertains to sales of Units that includes Customer payment terms, Unit sales price, and number of Units and excludes any Customer specific information, and 2) copies of Company invoices, payments, etc. that pertain to Company Costs.

Confidentiality:	This Term Sheet is confidential to the Parties and their respective representatives and is subject to the confidentiality agreement(s) entered into between the Parties, which shall continue in full force and effect.
Unit Requirements:	Notwithstanding the above, Company shall have no financial obligation in support of warranty-related Hard Costs as cost for a 5- year manufacturer's warranty is already included in the Supplier Cost to Company. Hard Costs means any material and transport costs and shall exclude any costs associated with trouble shooting or root cause analysis of the warranty related issue. All Units delivered under this Agreement shall comply with Underwriter Laboratory and Design Light Consortium certification requirements.
Governing Law:	THIS TERM SHEET SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH INTERNAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE COMMONWEALTH OF MASSACHUSETTS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THOSE OF THE COMMONWEALTH OF MASSACHUSETTS. ALL DISPUTES SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION IN THE STATE OR FEDERAL COURTS IN THE COMMONWEALTH OF MASSACHUSETTS.
Miscellaneous:	This Term Sheet may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various sections of this Term Sheet have been inserted for reference only and shall not be deemed to be a part of this Term Sheet.
Third Party Beneficiaries:	Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Term Sheet.

[*Signature Page Follows*]

IN WITNESS WHEREOF, Company and Supplier have caused this Agreement to be executed as of the Effective Date.

Supplier: 4D Bios	**Company: Agrify Corporation**
By: _____	By: _____
Name:	Name: Raymond Chang
Title:	Title: CEO
Date: _____	Date: _____

Exhibit 10.5

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of _____, between Agrify Corporation (the "Company") and Raymond Chang ("Executive," together with the Company, the "Parties" and, each, a "Party").

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Chief Executive Officer and shall report exclusively and directly to the Board of Directors of the Company (the "Board"). Executive shall perform the duties consistent with Executive's title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. The principal place of performance by Executive of Executive's duties hereunder shall be the Company's offices in Burlington, MA, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive's duties.

2. Term.

2.1 Term. Executive's employment hereunder shall commence on _____, 2021[1] (the "Commencement Date") and shall continue for a three-year period thereafter (the "Initial Term"), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive's employment has not previously been terminated, Executive's employment hereunder shall automatically be extended for successive three-year periods (each a "Renewal Term"), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the "Term" at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive's employment is terminated prior to the end of such Term), and the "Employment Period" means the period of Executive's employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive's termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

[1] Closing date of the IPO.

3.1 Salary. Executive shall receive a base salary (the "Base Salary") payable in substantially equal installments in accordance with the Company's normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive's starting Base Salary shall be at the annual rate of $300,000.

3.2 Discretionary Bonus. Executive shall be eligible to receive a discretionary performance-based bonus of up to $300,000 (a "Discretionary Bonus") with respect to each fiscal year of the Company (a "Fiscal Year") based on the terms and conditions hereof. Any Discretionary Bonus for the Fiscal Year in which the Commencement Date occurs (the "First Fiscal Year") will be prorated based on the number of days during the First Fiscal Year Executive was employed by the Company. A Discretionary Bonus, if any, will be determined and paid at the sole and complete discretion of the Company and may be based on a variety of factors, including, but not limited to, Executive's individual performance and the overall performance of the Company. To be eligible for a Discretionary Bonus, Executive must be employed by the Company at the time such Bonus is paid.

3.3 Annual Compensation Review and Adjustment. The Company agrees that by February 1st of every calendar year, the Board and the Compensation Committee of the Board shall have reviewed and adjusted the compensation of Executive based on the results of a report of an independent compensation consultant to be engaged by the Board or the Compensation Committee of the Board, at the Company's sole expense. The results of such report shall take into account a number of factors the consultant deems relevant, including but not limited to an analysis of at least three chief executive officers of other comparable publicly held companies of similar size, similar markets, and who perform their duties in the same geographical location that Executive performs his duties.

3.4 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites established from time to time by the Company on a basis that is no less favorable than such programs and perquisites are provided by the Company to the Company's other senior executives, subject to the eligibility requirements and other terms of such programs and perquisites, and subject to the Company's right to amend, terminate or take other action with respect to any such programs and perquisites. Notwithstanding the foregoing, the Board shall have the authority to provide benefits to the Executive in his capacity as Chief Executive Officer that may not be made available to other senior executives of the Company.

3.5 Vacation and Other Paid Time Off. Executive shall be entitled to four (4) weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy.

3.6 Required Taxes and Withholdings. The Company shall withhold from any payments made to Executive (including, without limitation, those made under this Agreement) all federal, state, local or other taxes and withholdings as shall be required pursuant to any law or governmental regulation or ruling.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Company; (ii) subject to the proviso below, devote Executive's entire business time, energy and skill to Executive's services under this Agreement; (iii) use Executive's best efforts to promote and serve the interests of the Company and to perform Executive's duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise**,** except as provided below in this Section 4; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive's obligations and duties to the Company, provided, however, that the foregoing shall not prevent the Executive from managing Executive's personal affairs and passive personal investments, serving on the board of directors (or comparable body) of any third-party corporate entity that is not providing Competing Services (as defined in Section 10(f)(ii) hereof) and Executive obtains prior Company consent (which consent will not be unreasonably withheld), and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with the Executive's duties hereunder or create a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "Reimbursement Policies"). Subject to the provisions of Section 18.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "Disability" means a "disability" that entitles Executive to benefits under the applicable Company long-term disability plan covering Executive and, in the absence of such a plan, that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 180 days out of any 365 day period or for 120 consecutive days. In the event of any question as to the existence, extent or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied so as to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

6.3 For Cause by the Company.

(a) The Company may terminate Executive's employment for Cause, at any time, upon the unanimous agreement of the Board (excluding the Executive) and written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "Cause" means (i) the willful and continual failure by Executive to perform in any material respect the duties or obligations of his employment with the Company or to carry out the reasonable and lawful directives of the Board (which directives are consistent with Executive's position); *provided* such failure remains uncured (if capable of being cured) for a period of sixty (60) days after written notice describing the same is given to Executive; (ii) Executive's indictment for any crime which constitutes a felony or indictment for any crime involving fraud, misappropriation or embezzlement (other than any such crime involving the Company or any of its affiliates); (iii) any act of fraud, misappropriation or embezzlement involving the Company or any of its affiliates; (iv) any breach by Executive of the provisions of his Assignment of Inventions Agreement (as defined below) or a material breach or violation of this Agreement or any Company policy then in effect which remains uncured (if capable of being cured) for a period of sixty (60) days after written notice describing the same is given to Executive; or (v) any attempt by the Executive to improperly secure any personal profit in connection with the business of the Company or any of its affiliates. Notwithstanding anything contained herein to the contrary, in the event of Executive's termination for Cause, Executive shall be entitled to a reasonable opportunity to be heard by the Board prior to the effective date of such termination.

6.4 Resignation by Executive for Good Reason. Executive may resign Executive's employment hereunder for Good Reason, at any time, provided that Executive provides the Company with ten (10) days' prior written notice of such resignation and such notice is given within thirty (30) days of when Good Reason first arises. For the purpose of this Agreement, "Good Reason" means (i) a material and substantial diminution in Executive's duties, authority, or responsibilities that would be inconsistent with Executive's position (other than while Executive is temporarily physically or mentally incapacitated, as permitted under Section 8 below or as required by applicable law), (ii) a material failure by the Company to pay Executive's compensation as provided for herein, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith; (iii) a change in the location of Executive's principal place of performance from other than that specified in Section 1 above; (iv) the occurrence of a Change of Control (as defined in Section 10(f)(i) hereof); (v) the failure by the Company to conduct an annual compensation review and adjustment in accordance with Section 3.3 above; or (vi) other material breach by the Company of a material provision of this Agreement or any other agreement between the Company and Executive; provided (x) Executive has provided the Company with written notice reasonably detailing the grounds giving rise to Good Reason within thirty (30) days of the occurrence thereof or, if later, within thirty (30) days of the date upon which Executive first becomes aware of such grounds, and (y) the Company fails to cure such grounds within thirty (30) days after delivery to it of such written notice. Executive's date of termination in the event Executive resigns his employment for Good Reason shall be the effective date of Executive's notice of resignation for Good Reason, except that Company may waive all or any part of the above-referenced 10-day notice period or of the 30-day cure period, in which event Executive's date of termination shall be the last day of such notice or cure period that has not been waived or, if the entire notice or cure period has been waived, the date that Executive provided notice of the event giving rise to Good Reason or of his resignation for Good Reason. For the avoidance of doubt, Executive's exclusive remedy against the Company in the event the Company materially breaches this Agreement is to invoke the provisions of this Section 6.4 and Section 7 below.

6.5 Without Cause or Without Good Reason. The Company may terminate Executive's employment, without Cause, at any time, with or without prior notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may terminate Executive's employment without Good Reason upon at least thirty (30) days prior written notice to the Company without any liability. Termination of Executive's employment without Cause by the Company or without Good Reason by Executive shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 6.6 below.

6.6 Resignation from Other Positions. Upon termination of Executive's employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive's termination of employment, Executive, at the direction of the Board, shall immediately submit to the Company letter(s) of resignation for any such boards, offices and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices and appointments.

7. Effect of Termination of Employment.

7.1 Generally. In the event Executive's employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 13 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive's employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the "Accrued Obligations"): (i) Executive's Base Salary through and including the effective date of Executive's termination of employment (the "Termination Date"), which shall be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (ii) payment for accrued unused vacation time, subject to the Company's then current vacation policy, which shall also be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (iii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iv) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive's taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated by the Company pursuant to Section 6.5 above (without Cause) or in connection with a Change of Control, or by Executive pursuant to Section 6.4 hereof (Good Reason), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "Severance Benefits"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive payment of an amount (the "Severance Pay") equal to the greater of (A) three hundred percent (300%) of Executive's Base Salary immediately prior to the Termination Date (or, if Good Reason was attributable to the Company's failure to pay the minimum amount of Base Salary provided herein, such minimum amount) and (B) $1,000,000, payable from the day after the Termination Date through the last day of the Term (the "Severance Period"). In addition, if the Company terminates Executive's employment without Cause, or if Executive resigns for Good Reason, upon the occurrence of, or within thirty (30) days prior to, or within six (6) months following, the effective date of a Change of Control, all issued but unvested options shall immediately vest. The Severance Pay shall be paid in the form of salary continuation pursuant to the terms and conditions of Section 3.1 above, commencing within ninety (90) days following the Termination Date on the first regularly scheduled payroll date of the Company that is practicable after the effective date of the Separation Agreement (defined in Section 7.2(b) below), *except* that, if the Separation Agreement may be executed and/or revoked in a calendar year following the calendar year in which the Termination Date occurs, the Severance Pay shall commence on the first regularly scheduled payroll date of the Company in the calendar year in which the consideration or, if applicable, release revocation period ends to the extent necessary to comply with Section 409A (as defined in Section 18.2). The first such payment shall include payment for any payroll dates between the Termination Date and the date of such payment.

(ii) During the Severance Period until such time, if any, as Executive is eligible for group health insurance benefits from another employer, Executive shall be eligible to continue to participate in the Company's group health insurance benefits on the same terms and conditions as then applicable to current employees, *except* that, if Executive is not permitted to continue to participate in any such health insurance plans for any portion of the Severance Period as a result of the terms of such plans or applicable law and Executive elects to continue his or his dependents' health insurance benefits pursuant to COBRA, the Company will pay or reimburse Executive for the portion of the COBRA premium that is equal to the insurance premium the Company would pay if Executive was then an active employee of the Company. Following the Severance Period, should Executive elect to continue his or his dependents' health insurance benefits, Executive shall be responsible for the entire cost thereof. If the Company is unable to provide the benefit provided above in this paragraph without violating applicable health care discrimination laws, the Company shall pay Executive a gross amount equal to what the Company's cost would have been to provide such benefit.

(iii) Notwithstanding the foregoing, the aggregate amount described in this Section 7.2(a) shall be reduced by the present value of any other cash severance or termination benefits payable to Executive under any other plans, programs or arrangement of the Company, subject to compliance with Section 409A.

(iv) For the avoidance of doubt, Executive's sole and exclusive remedy upon a termination for which Executive is eligible for Severance Benefits under this Section 7.2 shall be the receipt of the Severance Benefits.

(b) Separation Agreement and Other Conditions for Severance Benefits.

(i) Provision of the Severance Benefits is conditioned on (i) Executive's continued compliance in all material respects with Executive's continuing obligations to the Company, including, without limitation, the terms of this Agreement and of the Confidentiality Agreement (defined in Section 9 below) that survive termination of Executive's employment with the Company, and (ii) Executive signing (without revoking if such right is provided under applicable law) a separation agreement and release in a form of that provided to Executive by the Company on or about the Termination Date (the "Separation Agreement"). Executive must so execute the Separation Agreement within 60 days following the Termination Date (or such shorter time as may be set forth in the Separation Agreement).

8. Notice of Termination. In the event Executive elects to terminate Executive's employment hereunder by resigning with or without Good Reason under Sections 6.4 or 6.5 above or by giving Notice of Non-Renewal under Section 6.6 above, Executive shall provide the Company with the applicable prior written notice of termination required by such Sections (the "Notice Period"). The Company may, in its discretion, waive all or any portion of such Notice Period. The Company may require that, during the Notice Period, or part or parts thereof, Executive does not do any of the following: (i) enter the Company's premises; (ii) undertake any work for any third party whether paid or unpaid and whether as an employee or otherwise; (iii) have any contact or communication with any client, customer or supplier of the Company; or (iv) have any contact or communication with any employee, officer, director, agent or consult of the Company. Additionally, during the Notice Period, or any part or parts thereof, the Company may require Executive to do any of the following: (i) perform special projects or perform duties not within Executive's normal duties (provided such duties are commensurate with Executive's position and title) or perform some but not all of Executive's normal duties; and (ii) keep the Company informed of Executive's whereabouts so that Executive can be contacted if the need arises for Executive to perform any duties provided by clause (i) of this sentence. The Company retains the right to terminate Executive's employment under Section 6.3 above during the Notice Period.

9. Confidentiality, Restrictive Covenant, Intellectual Property, Return of Company Property and Non-Disparagement. Company and Executive have entered into the Company's current standard Invention Assignment, Restrictive Covenants, and Confidentiality Agreement (the "Confidentiality Agreement"), a copy of which is annexed hereto as Exhibit A. The terms of the Confidentiality Agreement are hereby incorporated by reference into this Agreement, except that, to the extent there is an irreconcilable conflict between the terms of this Agreement and those of the Confidentiality Agreement, the terms of this Agreement shall govern. Executive's execution and compliance with the terms of the Confidentiality Agreement is a material term of this Agreement, upon which Executive's employment and continued employment with the Company is conditioned.

10. Confidentiality, Non-Solicitation and Non-Competition.

10.1 Representations and Acknowledgements. For purposes of Sections 10-13 and 15 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "Company Affiliates"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Customers (defined below) and Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Customers and Suppliers; (iii) the Company's Confidential Information and close Customer and Supplier relationships must be protected; (iv) this Section 10 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 10; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Customer and Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

10.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (defined 10.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other governmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so required, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 10.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 10.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Executive hereby represents and warrants that it shall assist the Company in remedying any such unauthorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "Confidential Information" means all information of a confidential or proprietary nature regarding the Company, its business or properties that the Company has furnished or furnishes to Executive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elaborations, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information regarding pay, bonuses, benefits and perquisites offered to or received by employees of the Company, as well as non-public information regarding the unique and special skills of specific employees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confidentiality obligation; or (iii) which was developed by Executive outside or independent of Executive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowledges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

10.3 Non-Interference, Non-Competition and Non-Diversion.

(a) No Interference with Customers. Executive agrees that, during the Restricted Period (defined in Section 10.3(f) below), regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly (defined below), actually or attempt to, (i) solicit, induce, or cause any Customer to terminate, reduce or refrain from renewing or extending its contractual or other business relationship with the Company; (ii) solicit, induce or cause any Customer to become a customer of or enter into any contractual or other relationship with Executive or any other person or entity for Competing Services (as defined in Section 10.3(f) below); and/or (iii) offer or provide to any Customer any Competing Services.

(b) No Interference with Employees and Other Suppliers. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to: (i) solicit, induce, or cause any Supplier of the Company to terminate, reduce or refrain from renewing or extending such person's or entity's business or employment relationship with the Company; (ii) solicit, induce or cause any employee of the Company to engage in Competing Services; or (iii) employ or otherwise engage as an employee, independent contractor or consultant (1) any employee of the Company or (2) any person who was employed by the Company within the then prior six-month period.

(c) Non-Diversion. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, be employed or engaged as an independent contractor or otherwise by any person or entity that, during the Employment Period, was an actual or potential Customer of Company to perform services the same or similar to those Executive provided to Company and/or the Company provided or offered to provide to such actual or potential Customer.

(d) Non-Competition. During the Employment Period and thereafter for a period equal to the greater of (A) six months and (B) from the day after the Termination Date through the last day of the Term, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to, engage in the business of providing Competing Services within the Territory (as defined in Section 10.3(f) below).

(e) Notice to Subsequent Employers. Upon commencing any engagement as a service provider (whether as an employee, independent contractor or otherwise) during the Restricted Period, Executive shall expressly advise each new employer and each other new recipient of Executive's services (each, a "Service Recipient") of Executive's continuing obligations to the Company under this Agreement and, in particular, this Section 10. Further, Executive hereby consents to the Company providing such notification to each such Service Recipient.

(f) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning.

(i) "Change of Control" means (A) the acquisition by a third party (or more than one party acting as a group) of securities of the Company representing more than sixty-six percent (66%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction; (B) a merger, consolidation or similar transaction following which the stockholders of the Company immediately prior thereto do not own at least sixty-six percent (66%) of the combined outstanding voting power of the surviving entity (or that entity's parent) in such merger, consolidation or similar transaction; or (c) the sale or other disposition of all or substantially all of the assets of the Company.

(ii) "Competing Services" means products or services that are the same, similar or otherwise in competition with the products and services of the Company with which Executive was involved or about which Executive acquired Confidential Information.

(iii) "Customer" means any company or individual: (i) who purchased products or services from the Company whom Executive contacted or served during the Employment Period, for whom Executive supervised contact or service during the Employment Period or about whom Executive acquired Confidential Information; and/or (ii) who was a potential customer of the Company within the one year immediately preceding the Termination Date and (A) about whom Executive acquired Confidential Information or (B) who contacted Executive, whom Executive contacted, or for whom Executive supervised contact regarding the potential purchase of products or services of the Company.

(iv) "directly or indirectly" as it relates to an activity taken by Executive includes any activity taken directly by Executive or indirectly on Executive's behalf, including any activity taken in conjunction with any other person or entity, and including any activity taken by Executive as an employee, agent, consultant, independent contractor, officer, director, principal, shareholder, equity holder, partner, member, joint venturer, lender, investor or otherwise, except that nothing in this Agreement shall prohibit Executive from being a passive holder, for investment purposes only, of not more than two percent (2%) of the outstanding stock of any company listed on a national securities exchange, or actively traded in a national over-the-counter market.

(v) "Restricted Period" means the Employment Period and for a period thereafter equaling the greater of (A) one year and (B) the duration of any Severance Period, except that such period shall be extended for any period therein during which Executive was in violation of any provision of this Section 10.3.

(vi) "Supplier" means any supplier of goods, services, funding, leads or prospects to the Company, including as an employee, independent contractor or in any other capacity.

(vii) "Territory" means any state in which the Company is doing business or in which it is contemplating to do business pursuant to a then current business plan.

11. Intellectual Property.

11.1 The Company's Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive's employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive's regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company ("Company Intellectual Property") shall be deemed "work for hire" and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be "work-for-hire," then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights ("Moral Rights"), including, without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral" or the like, that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such Moral Rights cannot be assigned under applicable law, Executive hereby ratifies and consents to any action that may be taken with respect to such Moral Rights by or on behalf of the Company and waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, "Intellectual Property" shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

11.2 Waiver. In the event that Executive owns or claims any rights to Company Intellectual Property that cannot be assigned to the Company, Executive irrevocably waives all claims and the enforcement of all such rights against the Company, and their respective officers directors, assigns and licensees, and agrees, at the Company's request and expense, to consent to and join in any action to enforce the Company's interests in such Company Intellectual Property. As to any rights to Company Intellectual Property that cannot be assigned to the Company or waived by Executive, Executive irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to license and sublicense, to reproduce, create derivative works, distribute, publicly perform and publicly display by all means now known or later developed, any and all such Company Intellectual Property.

11.3 Cooperation Regarding Intellectual Property. Executive agrees to assist the Company, and to take all reasonable steps, with securing patents, registering copyrights and trademarks, and obtaining any other forms of protection for the Company Intellectual Property in the United States and elsewhere. In particular, at the Company's expense (except as noted in clause (i) below), Executive shall forthwith upon request of the Company execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and take all such other action as the Company may reasonably request in order (i) to vest in the Company all of Executive's right, title, and interest in and to such Company Intellectual Property, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances ("Liens") (and Executive agrees to take such action, at Executive's expense, as is necessary to remove all such Liens) and (ii), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefor in any and all countries in such name as the Company shall determine. In the event that Executive is unable or unavailable or shall refuse to sign any lawful or necessary documents required in order for the Company to apply for and obtain any copyright or patent with respect to any work performed by Executive in the course of his employment with the Company (including applications or renewals, extensions, divisions or continuations), Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys-in-fact to act for and in Executive's behalf, and in Executive's place and stead, to execute and file any such applications or documents and to do all other lawfully permitted acts to further the prosecution and issuance of copyrights and patents with respect to such Company Intellectual Property with the same legal force and effect as if executed or undertaken by Executive.

11.4 No infringement. Executive represents and warrants to the Company that all Intellectual Property Executive delivers to the Company shall be original and shall not infringe upon or violate any patent, copyright or proprietary right of any person or third party.

11.5 License to Prior Invention. If Executive in the course of Executive's employment for the Company incorporates into a Company product Intellectual Property that Executive has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Executive's employment with the Company in which Executive has a property right (each, a "Prior Invention"), Executive hereby grants to the Company a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use and sell such Prior Invention. Executive hereby represents and warrants that all Prior Inventions have been listed by Executive on Exhibit B hereto or, if no such list is attached, that there are no Prior Inventions. Executive will not incorporate any Intellectual Property owned by any third party into any Company Intellectual Property without the Company's prior written permission.

11.6 Severability. To the extent this Agreement is required to be construed in accordance with laws of any state which precludes as a requirement in an employee agreement the assignment of certain classes of inventions made by an employee, this Section 11 will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes.

12. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

13. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 13. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

14. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photographs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Executive acknowledges and agrees that Executive has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages and voice messages) and that Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

15. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 10 through 13 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 10 through 13, restraining Executive from engaging in activities prohibited by Sections 10 through 13 and such other relief as may be required specifically to enforce any of the provisions in Sections 10 through 13. Executive further agrees that, if Executive breaches any of the provisions in Sections 10 through 13 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 10 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

16. Representations Regarding Prior Work and Legal Obligations.

16.1 Executive represents and warrants that Executive has no agreement or other legal obligation with any prior employer, or any other person or entity, that restricts Executive's ability to accept employment with the Company. Executive further represents and warrants that Executive is not a party to any agreement (including, without limitation, a non-competition, non-solicitation, no hire or similar agreement) and has no other legal obligation that restricts in any way Executive's ability to perform Executive's duties and satisfy Executive's other obligations to the Company, including, without limitation, those under this Agreement.

16.2 Executive represents and acknowledges that Executive has been instructed by the Company that at no time should Executive divulge to or use for the benefit of the Company or any Company Affiliates any trade secret or confidential or proprietary information of any previous employer or entity with which Executive was affiliated or of any other third-party. Executive expressly represents and warrants that Executive has not divulged or used any such information for the benefit of the Company or Company Affiliates and will not do so.

16.3 Executive represents and agrees that the Executive has not and will not misappropriate any intellectual property belonging to any other person or entity.

16.4 Executive acknowledges that the Company is basing important business decisions on these representations, agreements and warranties, and Executive affirms that all of the statements included herein are true. Executive agrees that Executive shall defend, indemnify and hold the Company harmless from any liability, expense (including attorneys' fees) or claim by any person in any way arising out of, relating to, or in connection with a breach and/or the falsity of any of the representations, agreements and warranties made by Executive in this Section 16.

17. Indemnification and Liability Insurance. The Company shall indemnify Executive to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys' fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses), and Executive will be entitled to the protection of any insurance policies that the Company may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or sustained by Executive in connection with any action, suit or proceeding brought by a third-party to which Executive may be made a party by reason of Executive's being or having been a director, officer or employee of the Company or any of its affiliates, or Executive's serving or having served any other enterprise as a director, officer or employee at the request of the Company (other than any dispute, claim or controversy arising under or relating to this Agreement), provided that he acted within the scope of his duties as a director, officer or employee of the Company. The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof; provided, however, that the Company may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the Company determines in good faith that such insurance is not available or is available only at unreasonable expense.

18. Miscellaneous Provisions.

18.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

18.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15th day of the third month (*i.e.*, 2½ months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to the Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A, and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

18.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

18.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

18.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

18.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to New York County, New York and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

18.7 Mutual Waiver of Jury Trial. Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

18.8 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to [_____], or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

18.9 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment hereunder, including without limitation Sections 10-15 and 18 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

18.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

18.11 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

18.12 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 10 above, and (iii) Executive is executing this Agreement voluntarily, knowingly and willingly and without duress.

18.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

18.14 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

18.15 Counterparts. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies, electronically scanned copies and other facsimiles of this Agreement (including such signed counterparts) may be used in lieu of the originals for any purpose.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

RAYMOND CHANG

AGRIFY CORPORATION

By: _____

Name:
Title:

[Signature page to Employment Agreement.]

EXHIBIT A

EXHIBIT B

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description

Exhibit 10.6

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of _____, between Agrify Corporation (the "Company") and Niv Krikov ("Executive," together with the Company, the "Parties" and, each, a "Party").

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Chief Financial Officer and shall report exclusively and directly to the Chief Executive Officer of the Company. Executive shall perform the duties consistent with Executive's title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. The principal place of performance by Executive of Executive's duties hereunder shall be the Company's offices in Burlington, MA, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive's duties.

2. Term.

2.1 Term. Executive's employment hereunder shall commence on _____, 2021[1] (the "Commencement Date") and shall continue for a two-year period thereafter (the "Initial Term"), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive's employment has not previously been terminated, Executive's employment hereunder shall automatically be extended for successive two-year periods (each a "Renewal Term"), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the "Term" at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive's employment is terminated prior to the end of such Term), and the "Employment Period" means the period of Executive's employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive's termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

3.1 Salary. Executive shall receive a base salary (the "Base Salary") payable in substantially equal installments in accordance with the Company's normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive's starting Base Salary shall be at the annual rate of $265,000.

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1 Closing date of the IPO.

3.2 Discretionary Bonus. Executive shall be eligible to receive a discretionary performance-based bonus of up to $180,000 (a "Discretionary Bonus") with respect to each fiscal year of the Company (a "Fiscal Year") based on the terms and conditions hereof. Any Discretionary Bonus for the Fiscal Year in which the Commencement Date occurs (the "First Fiscal Year") will be prorated based on the number of days during the First Fiscal Year Executive was employed by the Company. A Discretionary Bonus, if any, will be determined and paid at the sole and complete discretion of the Company and may be based on a variety of factors, including, but not limited to, Executive's individual performance and the overall performance of the Company. To be eligible for a Discretionary Bonus, Executive must be employed by the Company at the time such Bonus is paid.

3.3 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites established from time to time by the Company on a basis that is no less favorable than such programs and perquisites are provided by the Company to the Company's other senior executives, subject to the eligibility requirements and other terms of such programs and perquisites, and subject to the Company's right to amend, terminate or take other action with respect to any such programs and perquisites.

3.4 Vacation and Other Paid Time Off. Executive shall be entitled to four (4) weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy.

3.5 Required Taxes and Withholdings. The Company shall withhold from any payments made to Executive (including, without limitation, those made under this Agreement) all federal, state, local or other taxes and withholdings as shall be required pursuant to any law or governmental regulation or ruling.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Company; (ii) subject to the proviso below, devote Executive's entire business time, energy and skill to Executive's services under this Agreement; (iii) use Executive's best efforts to promote and serve the interests of the Company and to perform Executive's duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise**,** except as provided below in this Section 4; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive's obligations and duties to the Company, provided, however, that the foregoing shall not prevent the Executive from managing Executive's personal affairs and passive personal investments, serving on the board of directors (or comparable body) of any third-party corporate entity that is not providing Competing Services (as defined in Section 10(f)(ii) hereof) and Executive obtains prior Company consent (which consent will not be unreasonably withheld), and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with the Executive's duties hereunder or create a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "Reimbursement Policies"). Subject to the provisions of Section 18.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "Disability" means a "disability" that entitles Executive to benefits under the applicable Company long-term disability plan covering Executive and, in the absence of such a plan, that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 180 days out of any 365 day period or for 120 consecutive days. In the event of any question as to the existence, extent or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied so as to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

6.3 For Cause by the Company.

(a) The Company may terminate Executive's employment for Cause, at any time, upon written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "Cause" means (i) the willful and continual failure by Executive to perform the duties or obligations of his employment with the Company or to carry out the reasonable and lawful directives of the Board (which directives are consistent with Executive's position); *provided* such failure remains uncured for a period of thirty (30) days after written notice describing the same is given to Executive; (ii) Executive's indictment for any crime which constitutes a felony or indictment for any crime involving fraud, misappropriation or embezzlement (other than any such crime involving the Company or any of its affiliates); (iii) any act of fraud, misappropriation or embezzlement involving the Company or any of its affiliates; (iv) any breach by Executive of the provisions of his Assignment of Inventions Agreement (as defined below) or a material breach or violation of this Agreement or any Company policy then in effect which remains uncured (if capable of being cured) for a period of thirty (30) days after written notice describing the same is given to Executive; or (v) any attempt by the Executive to improperly secure any personal profit in connection with the business of the Company or any of its affiliates. Notwithstanding anything contained herein to the contrary, in the event of Executive's termination without Cause, Executive shall be entitled to a reasonable opportunity to be heard by the Company's Board of Directors prior to the effective date of such termination.

6.4 Resignation by Executive for Good Reason. Executive may resign Executive's employment hereunder for Good Reason, at any time, provided that Executive provides the Company with ten (10) days' prior written notice of such resignation and such notice is given within thirty (30) days of when Good Reason first arises. For the purpose of this Agreement, "Good Reason" means (i) a material and substantial diminution in Executive's duties, authority, or responsibilities that would be inconsistent with Executive's position (other than while Executive is temporarily physically or mentally incapacitated, as permitted under Section 8 below or as required by applicable law), (ii) a material failure by the Company to pay Executive's compensation as provided for herein, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith; (iii) a change in the location of Executive's principal place of performance from other than that specified in Section 1 above; or (iv) other material breach by the Company of a material provision of this Agreement or any other agreement between the Company and Executive; provided (x) Executive has provided the Company with written notice reasonably detailing the grounds giving rise to Good Reason within thirty (30) days of the occurrence thereof or, if later, within thirty (30) days of the date upon which Executive first becomes aware of such grounds, and (y) the Company fails to cure such grounds within thirty (30) days after delivery to it of such written notice. Executive's date of termination in the event Executive resigns his employment for Good Reason shall be the effective date of Executive's notice of resignation for Good Reason, except that Company may waive all or any part of the above-referenced 10-day notice period or of the 30-day cure period, in which event Executive's date of termination shall be the last day of such notice or cure period that has not been waived or, if the entire notice or cure period has been waived, the date that Executive provided notice of the event giving rise to Good Reason or of his resignation for Good Reason. For the avoidance out doubt, Executive's exclusive remedy against the Company in the event the Company materially breaches this Agreement is to invoke the provisions of this Section 6.4 and Section 7 below.

6.5 Without Cause or Without Good Reason. The Company may terminate Executive's employment, without Cause, at any time, with or without prior notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may terminate Executive's employment without Good Reason upon at least thirty (30) days prior written notice to the Company without any liability. Termination of Executive's employment without Cause by the Company or without Good Reason by Executive shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 6.6 below.

6.6 Resignation from Other Positions. Upon termination of Executive's employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive's termination of employment, Executive, at the direction of the Board, shall immediately submit to the Company letter(s) of resignation for any such boards, offices and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices and appointments.

7. Effect of Termination of Employment.

7.1 Generally. In the event Executive's employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 13 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive's employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the "Accrued Obligations"): (i) Executive's Base Salary through and including the effective date of Executive's termination of employment (the "Termination Date"), which shall be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (ii) payment for accrued unused vacation time, subject to the Company's then current vacation policy, which shall also be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (iii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iv) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive's taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated by the Company pursuant to Section 6.5 above (without Cause) or in connection with a Change of Control (as defined in Section 10(f)(i) hereof), or by Executive pursuant to Section 6.4 hereof (Good Reason), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "Severance Benefits"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive payment of an amount (the "Severance Pay") equal to Executive's Base Salary immediately prior to the Termination Date (or, if Good Reason was attributable to the Company's failure to pay the minimum amount of Base Salary provided herein, such minimum amount) for the period of time equal to the greater of (A) one year and (B) from the day after the Termination Date through the last day of the Term (the "Severance Period"). In addition, if the Company terminates Executive's employment without Cause, or if Executive resigns for Good Reason, upon the occurrence of, or within thirty (30) days prior to, or within six (6) months following, the effective date of a Change of Control, all issued but unvested options shall immediately vest. The Severance Pay shall be paid in the form of salary continuation pursuant to the terms and conditions of Section 3.1 above, commencing within ninety (90) days following the Termination Date on the first regularly scheduled payroll date of the Company that is practicable after the effective date of the Separation Agreement (defined in Section 7.2(b) below), *except* that, if the Separation Agreement may be executed and/or revoked in a calendar year following the calendar year in which the Termination Date occurs, the Severance Pay shall commence on the first regularly scheduled payroll date of the Company in the calendar year in which the consideration or, if applicable, release revocation period ends to the extent necessary to comply with Section 409A (as defined in Section 18.2). The first such payment shall include payment for any payroll dates between the Termination Date and the date of such payment.

(ii) During the Severance Period until such time, if any, as Executive is eligible for group health insurance benefits from another employer, Executive shall be eligible to continue to participate in the Company's group health insurance benefits on the same terms and conditions as then applicable to current employees, *except* that, if Executive is not permitted to continue to participate in any such health insurance plans for any portion of the Severance Period as a result of the terms of such plans or applicable law and Executive elects to continue his or his dependents' health insurance benefits pursuant to COBRA, the Company will pay or reimburse Executive for the portion of the COBRA premium that is equal to the insurance premium the Company would pay if Executive was then an active employee of the Company. Following the Severance Period, should Executive elect to continue his or his dependents' health insurance benefits, Executive shall be responsible for the entire cost thereof. If the Company is unable to provide the benefit provided above in this paragraph without violating applicable health care discrimination laws, the Company shall pay Executive a gross amount equal to what the Company's cost would have been to provide such benefit.

(iii) Notwithstanding the foregoing, the aggregate amount described in this Section 7.2(a) shall be reduced by the present value of any other cash severance or termination benefits payable to Executive under any other plans, programs or arrangement of the Company, subject to compliance with Section 409A.

(iv) For the avoidance of doubt, Executive's sole and exclusive remedy upon a termination for which Executive is eligible for Severance Benefits under this Section 7.2 shall be the receipt of the Severance Benefits.

(b) Separation Agreement and Other Conditions for Severance Benefits.

(i) Provision of the Severance Benefits is conditioned on (i) Executive's continued compliance in all material respects with Executive's continuing obligations to the Company, including, without limitation, the terms of this Agreement and of the Confidentiality Agreement (defined in Section 9 below) that survive termination of Executive's employment with the Company, and (ii) Executive signing (without revoking if such right is provided under applicable law) a separation agreement and release in a form of that provided to Executive by the Company on or about the Termination Date (the "Separation Agreement"). Executive must so execute the Separation Agreement within 60 days following the Termination Date (or such shorter time as may be set forth in the Separation Agreement).

8. Notice of Termination. In the event Executive elects to terminate Executive's employment hereunder by resigning with or without Good Reason under Sections 6.4 or 6.5 above or by giving Notice of Non-Renewal under Section 6.6 above, Executive shall provide the Company with the applicable prior written notice of termination required by such Sections (the "Notice Period"). The Company may, in its discretion, waive all or any portion of such Notice Period. The Company may require that, during the Notice Period, or part or parts thereof, Executive does not do any of the following: (i) enter the Company's premises; (ii) undertake any work for any third party whether paid or unpaid and whether as an employee or otherwise; (iii) have any contact or communication with any client, customer or supplier of the Company; or (iv) have any contact or communication with any employee, officer, director, agent or consult of the Company. Additionally, during the Notice Period, or any part or parts thereof, the Company may require Executive to do any of the following: (i) perform special projects or perform duties not within Executive's normal duties (provided such duties are commensurate with Executive's position and title) or perform some but not all of Executive's normal duties; and (ii) keep the Company informed of Executive's whereabouts so that Executive can be contacted if the need arises for Executive to perform any duties provided by clause (i) of this sentence. The Company retains the right to terminate Executive's employment under Section 6.3 above during the Notice Period.

9. Confidentiality, Restrictive Covenant, Intellectual Property, Return of Company Property and Non-Disparagement. Company and Executive have entered into the Company's current standard Invention Assignment, Restrictive Covenants, and Confidentiality Agreement (the "Confidentiality Agreement"), a copy of which is annexed hereto as Exhibit A. The terms of the Confidentiality Agreement are hereby incorporated by reference into this Agreement, except that, to the extent there is an irreconcilable conflict between the terms of this Agreement and those of the Confidentiality Agreement, the terms of this Agreement shall govern. Executive's execution and compliance with the terms of the Confidentiality Agreement is a material term of this Agreement, upon which Executive's employment and continued employment with the Company is conditioned.

10. Confidentiality, Non-Solicitation and Non-Competition.

10.1 Representations and Acknowledgements. For purposes of Sections 10-13 and 15 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "Company Affiliates"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Customers (defined below) and Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Customers and Suppliers; (iii) the Company's Confidential Information and close Customer and Supplier relationships must be protected; (iv) this Section 10 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 10; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Customer and Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

10.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (defined 10.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other governmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so required, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 10.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 10.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Executive hereby represents and warrants that it shall assist the Company in remedying any such unauthorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "Confidential Information" means all information of a confidential or proprietary nature regarding the Company, its business or properties that the Company has furnished or furnishes to Executive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elaborations, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information regarding pay, bonuses, benefits and perquisites offered to or received by employees of the Company, as well as non-public information regarding the unique and special skills of specific employees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confidentiality obligation; or (iii) which was developed by Executive outside or independent of Executive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowledges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

10.3 Non-Interference, Non-Competition and Non-Diversion.

(a) No Interference with Customers. Executive agrees that, during the Restricted Period (defined in Section 10.3(f) below), regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly (defined below), actually or attempt to, (i) solicit, induce, or cause any Customer to terminate, reduce or refrain from renewing or extending its contractual or other business relationship with the Company; (ii) solicit, induce or cause any Customer to become a customer of or enter into any contractual or other relationship with Executive or any other person or entity for Competing Services (as defined in Section 10.3(f) below); and/or (iii) offer or provide to any Customer any Competing Services.

(b) No Interference with Employees and Other Suppliers. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to: (i) solicit, induce, or cause any Supplier of the Company to terminate, reduce or refrain from renewing or extending such person's or entity's business or employment relationship with the Company; (ii) solicit, induce or cause any employee of the Company to engage in Competing Services; or (iii) employ or otherwise engage as an employee, independent contractor or consultant (1) any employee of the Company or (2) any person who was employed by the Company within the then prior six-month period.

(c) Non-Diversion. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, be employed or engaged as an independent contractor or otherwise by any person or entity that, during the Employment Period, was an actual or potential Customer of Company to perform services the same or similar to those Executive provided to Company and/or the Company provided or offered to provide to such actual or potential Customer.

(d) Non-Competition. During the Employment Period and thereafter for a period equal to the greater of (A) six months and (B) from the day after the Termination Date through the last day of the Term, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to, engage in the business of providing Competing Services within the Territory (as defined in Section 10.3(f) below).

(e) Notice to Subsequent Employers. Upon commencing any engagement as a service provider (whether as an employee, independent contractor or otherwise) during the Restricted Period, Executive shall expressly advise each new employer and each other new recipient of Executive's services (each, a "Service Recipient") of Executive's continuing obligations to the Company under this Agreement and, in particular, this Section 10. Further, Executive hereby consents to the Company providing such notification to each such Service Recipient.

(f) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning.

(i) "Change of Control" means (A) the acquisition by a third party (or more than one party acting as a group) of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction; (B) a merger, consolidation or similar transaction following which the stockholders of the Company immediately prior thereto do not own at least fifty percent (50%) of the combined outstanding voting power of the surviving entity (or that entity's parent) in such merger, consolidation or similar transaction; or (c) the sale or other disposition of all or substantially all of the assets of the Company.

(ii) "Competing Services" means products or services that are the same, similar or otherwise in competition with the products and services of the Company with which Executive was involved or about which Executive acquired Confidential Information.

(iii) "Customer" means any company or individual: (i) who purchased products or services from the Company whom Executive contacted or served during the Employment Period, for whom Executive supervised contact or service during the Employment Period or about whom Executive acquired Confidential Information; and/or (ii) who was a potential customer of the Company within the one year immediately preceding the Termination Date and (A) about whom Executive acquired Confidential Information or (B) who contacted Executive, whom Executive contacted, or for whom Executive supervised contact regarding the potential purchase of products or services of the Company.

(iv) "directly or indirectly" as it relates to an activity taken by Executive includes any activity taken directly by Executive or indirectly on Executive's behalf, including any activity taken in conjunction with any other person or entity, and including any activity taken by Executive as an employee, agent, consultant, independent contractor, officer, director, principal, shareholder, equity holder, partner, member, joint venturer, lender, investor or otherwise, except that nothing in this Agreement shall prohibit Executive from being a passive holder, for investment purposes only, of not more than two percent (2%) of the outstanding stock of any company listed on a national securities exchange, or actively traded in a national over-the-counter market.

(v) "Restricted Period" means the Employment Period and for a period thereafter equaling the greater of (A) one year and (B) the duration of any Severance Period, except that such period shall be extended for any period therein during which Executive was in violation of any provision of this Section 10.3.

(vi) "Supplier" means any supplier of goods, services, funding, leads or prospects to the Company, including as an employee, independent contractor or in any other capacity.

(vii) "Territory" means any state in which the Company is doing business or in which it is contemplating to do business pursuant to a then current business plan.

11. Intellectual Property.

11.1 The Company's Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive's employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive's regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company ("Company Intellectual Property") shall be deemed "work for hire" and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be "work-for-hire," then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights ("Moral Rights"), including, without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral" or the like, that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such Moral Rights cannot be assigned under applicable law, Executive hereby ratifies and consents to any action that may be taken with respect to such Moral Rights by or on behalf of the Company and waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, "Intellectual Property" shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

11.2 Waiver. In the event that Executive owns or claims any rights to Company Intellectual Property that cannot be assigned to the Company, Executive irrevocably waives all claims and the enforcement of all such rights against the Company, and their respective officers directors, assigns and licensees, and agrees, at the Company's request and expense, to consent to and join in any action to enforce the Company's interests in such Company Intellectual Property. As to any rights to Company Intellectual Property that cannot be assigned to the Company or waived by Executive, Executive irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to license and sublicense, to reproduce, create derivative works, distribute, publicly perform and publicly display by all means now known or later developed, any and all such Company Intellectual Property.

11.3 Cooperation Regarding Intellectual Property. Executive agrees to assist the Company, and to take all reasonable steps, with securing patents, registering copyrights and trademarks, and obtaining any other forms of protection for the Company Intellectual Property in the United States and elsewhere. In particular, at the Company's expense (except as noted in clause (i) below), Executive shall forthwith upon request of the Company execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and take all such other action as the Company may reasonably request in order (i) to vest in the Company all of Executive's right, title, and interest in and to such Company Intellectual Property, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances ("Liens") (and Executive agrees to take such action, at Executive's expense, as is necessary to remove all such Liens) and (ii), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefor in any and all countries in such name as the Company shall determine. In the event that Executive is unable or unavailable or shall refuse to sign any lawful or necessary documents required in order for the Company to apply for and obtain any copyright or patent with respect to any work performed by Executive in the course of his employment with the Company (including applications or renewals, extensions, divisions or continuations), Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys-in-fact to act for and in Executive's behalf, and in Executive's place and stead, to execute and file any such applications or documents and to do all other lawfully permitted acts to further the prosecution and issuance of copyrights and patents with respect to such Company Intellectual Property with the same legal force and effect as if executed or undertaken by Executive.

11.4 No infringement. Executive represents and warrants to the Company that all Intellectual Property Executive delivers to the Company shall be original and shall not infringe upon or violate any patent, copyright or proprietary right of any person or third party.

11.5 License to Prior Invention. If Executive in the course of Executive's employment for the Company incorporates into a Company product Intellectual Property that Executive has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Executive's employment with the Company in which Executive has a property right (each, a "Prior Invention"), Executive hereby grants to the Company a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use and sell such Prior Invention. Executive hereby represents and warrants that all Prior Inventions have been listed by Executive on Exhibit B hereto or, if no such list is attached, that there are no Prior Inventions. Executive will not incorporate any Intellectual Property owned by any third party into any Company Intellectual Property without the Company's prior written permission.

11.6 Severability. To the extent this Agreement is required to be construed in accordance with laws of any state which precludes as a requirement in an employee agreement the assignment of certain classes of inventions made by an employee, this Section 11 will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes.

12. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

13. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 13. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

14. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photographs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Executive acknowledges and agrees that Executive has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages and voice messages) and that Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

15. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 10 through 13 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 10 through 13, restraining Executive from engaging in activities prohibited by Sections 10 through 13 and such other relief as may be required specifically to enforce any of the provisions in Sections 10 through 13. Executive further agrees that, if Executive breaches any of the provisions in Sections 10 through 13 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 10 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

16. Representations Regarding Prior Work and Legal Obligations.

16.1 Executive represents and warrants that Executive has no agreement or other legal obligation with any prior employer, or any other person or entity, that restricts Executive's ability to accept employment with the Company. Executive further represents and warrants that Executive is not a party to any agreement (including, without limitation, a non-competition, non-solicitation, no hire or similar agreement) and has no other legal obligation that restricts in any way Executive's ability to perform Executive's duties and satisfy Executive's other obligations to the Company, including, without limitation, those under this Agreement.

16.2 Executive represents and acknowledges that Executive has been instructed by the Company that at no time should Executive divulge to or use for the benefit of the Company or any Company Affiliates any trade secret or confidential or proprietary information of any previous employer or entity with which Executive was affiliated or of any other third-party. Executive expressly represents and warrants that Executive has not divulged or used any such information for the benefit of the Company or Company Affiliates and will not do so.

16.3 Executive represents and agrees that the Executive has not and will not misappropriate any intellectual property belonging to any other person or entity.

16.4 Executive acknowledges that the Company is basing important business decisions on these representations, agreements and warranties, and Executive affirms that all of the statements included herein are true. Executive agrees that Executive shall defend, indemnify and hold the Company harmless from any liability, expense (including attorneys' fees) or claim by any person in any way arising out of, relating to, or in connection with a breach and/or the falsity of any of the representations, agreements and warranties made by Executive in this Section 16.

17. Indemnification and Liability Insurance. The Company shall indemnify Executive to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys' fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses), and Executive will be entitled to the protection of any insurance policies that the Company may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or sustained by Executive in connection with any action, suit or proceeding brought by a third-party to which Executive may be made a party by reason of Executive's being or having been a director, officer or employee of the Company or any of its affiliates, or Executive's serving or having served any other enterprise as a director, officer or employee at the request of the Company (other than any dispute, claim or controversy arising under or relating to this Agreement), provided that he acted within the scope of his duties as a director, officer or employee of the Company. The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof; provided, however, that the Company may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the Company determines in good faith that such insurance is not available or is available only at unreasonable expense.

18. Miscellaneous Provisions.

18.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

18.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15th day of the third month (*i.e.*, 2½ months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to the Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A, and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

18.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

18.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

18.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

18.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to New York County, New York and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

18.7 Mutual Waiver of Jury Trial. Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

18.8 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to [_____], or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

18.9 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment hereunder, including without limitation Sections 10-15 and 18 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

18.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

18.11 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

18.12 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 10 above, and (iii) Executive is executing this Agreement voluntarily, knowingly and willingly and without duress.

18.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

18.14 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

18.15 Counterparts. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies, electronically scanned copies and other facsimiles of this Agreement (including such signed counterparts) may be used in lieu of the originals for any purpose.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

NIV KRIKOV

AGRIFY CORPORATION

By: _____
Name:
Title:

[Signature page to Employment Agreement.]

EXHIBIT A

EXHIBIT B

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description

Exhibit 10.7

Execution Version

EXECUTIVE EMPLOYMENT AGREEMENT

THIS EXECUTIVE EMPLOYMENT AGREEMENT (the "**Agreement**"), effective as of this 4th day of June, 2019 (the "**Effective Date**") is entered into by and between Agrinamics, Inc., a Nevada corporation (the "**Company**") and Matt Liotta (the "**Executive**").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which the Company and the Executive hereby acknowledge, the Company and the Executive agree as follows:

1. Employment.

1.1. Term. Subject to Section 3 hereof, the Company agrees to employ Executive, and Executive agrees to be employed by the Company, in each case pursuant to this Agreement, for a period commencing on the Effective Date until terminated as set forth in Section 2 below (the "**Employment Period**").

1.2. Duties. During the Employment Period, Executive shall serve as the Chief Vision Officer and Chief Technology Officer of the Company (for purposes of this Section 1, "the Company" shall include any successor entity and businesses to be integrated in the future) and such other positions as the Company shall determine from time to time, and shall report directly to the Board of Directors (the "**Board**"), or such other person as may designated by the Company. In his position as the Chief Vision Officer and Chief Technology Officer of the Company, Executive shall perform duties customary for an executive with Executive's title of a corporation similar to the Company's size and nature, plus such additional duties, consistent with the foregoing, as the Board may reasonably assign. In addition, Executive shall work with other executives and employees of the Company on matters dealing with the Company (as defined in Section 2.4) as the Board may reasonably assign.

1.3. Exclusivity. During the Employment Period, Executive shall devote substantially all of his business time and attention to the business and affairs of the Company, shall faithfully serve the Company, and shall conform to and comply with the lawful and reasonable directions and instructions given to him by the Board, consistent with Section 1.2 hereof. During the Employment Period, Executive shall use his best efforts to promote and serve the interests of the Company, and shall not engage in any other business activity, whether or not such activity shall be engaged in for pecuniary profit; provided, however, that Executive may (a) serve any civic, charitable, educational or professional organization, (b) engage in any Permitted Activity (as defined herein), and (c) manage his personal investments, including but not limited to Argand Group, LLC, in each case so long as any such activities do not (x) violate the terms of this Agreement (including Section 3) or (y) materially interfere with Executive's duties and responsibilities to the Company. "**Permitted Activity**" means performing consulting or other professional services for any customer, affiliate, or supplier of Company or of any Company affiliate.

1.4. Compensation. As compensation for the performance of Executive's services hereunder, during the Employment Period, the Company shall pay to Executive a salary at an annual rate of one hundred fifty thousand Dollars ($150,000.00) payable in accordance with the Company's standard payroll policies (the "**Base Salary**"). The Base Salary will be reviewed annually and may be adjusted upward (but not downward) by the board of directors of the Company (the "**Board**") (or a committee thereof) in its discretion. Executive will be eligible to receive bonuses and to participate in any annual, short-term, long-term or variable compensation plans of the Company in accordance with any plan or decision the Board, or any committee or other person authorized by the Board, may in its sole discretion determine from time to time.

1.5. Employee Benefits; PTO. During the Employment Period, Executive shall be eligible to participate in such health and other group insurance, other employee and fringe benefit plans and programs customary for senior executives of similarly situated companies as are in effect from time to time. The Company reserves the right to establish, terminate, or amend any employee benefit plan or program at any time in the Board's sole discretion. During the Employment Period, Executive shall be entitled to use up to fifteen (15) days of paid time off ("**PTO**") days per calendar year, to be taken or carried over in accordance with the Company's PTO policy. The number of PTO days is prorated for any partial calendar year of service during the Employment Period.

1.6. Business Expenses. The Company shall pay or reimburse Executive, upon presentation of appropriate documentation, in accordance with the expense reimbursement policy of the Company as approved by the Board (or a committee thereof) and in effect from time to time for all commercially reasonable out-of-pocket business expenses that Executive incurs during the Employment Period in performing his duties under this Agreement. Notwithstanding anything herein to the contrary or otherwise, except to the extent any expense or reimbursement described in this Agreement does not constitute a "deferral of compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance thereunder ("**Section 409A**"), any expense or reimbursement described in this Agreement shall meet the following requirements: (i) the amount of expenses eligible for reimbursement provided to Executive during any calendar year will not affect the amount of expenses eligible for reimbursement to Executive in any other calendar year; (ii) the reimbursements for expenses for which Executive is entitled to be reimbursed shall be made in accordance with the Company's expense reimbursement policy, but in any event no later than on or before the last day of the calendar year in which the applicable expense is either incurred or submitted to Company, whichever occurs last; (iii) the right to payment or reimbursement or in-kind benefits hereunder may not be liquidated or exchanged for any other benefit; and (iv) the reimbursements shall be made pursuant to objectively determinable and nondiscretionary Company policies and procedures regarding such reimbursement of expenses.

2. Employment Termination.

2.1. Termination of Employment. The Company may terminate Executive's employment hereunder for any reason and at any time during the Employment Period, and Executive may voluntarily terminate his employment hereunder for any reason during the Employment Period upon not less than 15 days' written notice to the Company (the date on which Executive's employment terminates for any reason is herein referred to as the "**Termination Date**"). Upon the termination of Executive's employment with the Company for any reason, Executive shall be entitled to (i) payment of any Base Salary earned but unpaid through the Termination Date, (ii) earned but unused vacation days paid out at the per-business-day Base Salary rate, (iii) benefits in accordance with the terms of any applicable Company arrangements and (iv) any unreimbursed expenses in accordance with Section 2.3 hereof (collectively, the "**Accrued Amounts**").

2.2. Certain Terminations.

(a) Termination by the Company other than for Cause, Death or Disability. If Executive's employment is terminated by the Company other than for Cause, death or Disability, in addition to the Accrued Amounts, Executive shall be entitled to continued payment of his Base Salary at the per payroll period rate in effect immediately prior to the Termination Date with such payments to be made on the Company's regular payroll dates for a severance period of six (6) months following the Termination Date, and the foregoing payments shall begin on the first regular occurring payroll date following the date on which the Release (as hereinafter defined) has become effective (the foregoing payments, the "**Severance Amount**"). The Company's obligations to pay the Severance Amount shall be conditioned upon: (i) Executive's continued compliance with his obligations under Section 3 of this Agreement and (ii) Executive's execution, delivery and non-revocation of a valid and enforceable general release of claims in form and substance satisfactory to the Company (the "**Release**"), within the applicable deadline set forth therein, but in no event later than forty-five (45) calendar days following the Termination Date. Notwithstanding the foregoing, if Termination Date occurs within ten (10) business days of the end of a calendar year, payment of the Severance Amount shall commence no earlier than the first payroll date in the following calendar year.

(b) Definitions. For purposes of Section 2, the following terms have the following meanings:

(i) "**Cause**" shall mean Executive's having engaged in any of the following: (A) gross negligence, recklessness, or willful misconduct in the performance of any of his duties to the Company; (B) intentional failure or refusal to perform reasonably assigned duties, which is not cured to the reasonable satisfaction of the Board within 10 days after Executive receives from the Board written notice of such failure or refusal, which notice is given to Executive no later than 30 days after the Board becomes aware of such failure or refusal; (C) any conviction of, or plea of guilty or nolo contendere to, (1) any felony (other than motor vehicle offenses) or (2) any crime (whether or not a felony) involving fraud, theft or embezzlement, whether from a law of the United States or any state thereof or any similar foreign law to which Executive may be subject; (D) the Executive's repeated failure or refusal to perform material responsibilities or duties or to follow the directions or instructions of the Company that are reasonable and appropriate for a Chief Vision Officer and Chief Technology Officer, (E) Executive's breach of any material provision of this Agreement, it being understood and acknowledged by the Company that any or (F) any willful failure to comply with any written rules, regulations, policies or procedures of the Company which, if not complied with, would reasonably be expected to have a material adverse effect on the business or financial condition of the Company, which in the case of a failure that is capable of being cured, is not cured to the reasonable satisfaction of the Board within 10 days after Executive receives from the Company written notice of such failure, which notice is given to Executive no later than 30 days after the Board becomes aware of such failure. If the Company terminates Executive's employment for Cause, the Company shall provide written notice to Executive of that fact on or before the Termination Date.

(ii) "**Disability**" shall mean Executive is entitled to and has begun to receive long-term disability benefits under the long-term disability plan of the Company in which Executive participates, or, if there is no such plan, Executive's inability, due to physical or mental ill health, to perform the essential functions of Executive's job, with or without a reasonable accommodation, for 180 days out of any 270 day consecutive day period.

(c) Section 409A. To the extent applicable, payments provided under this Agreement are intended to comply with, or be exempt from, the provisions of Section 409A. This Agreement shall be administered in a manner consistent with this intent, and any provision shall be amended to comply with Section 409A. If Executive is a "specified employee" for purposes of Section 409A, any Severance Amount required to be paid pursuant to Section 3.2 hereof, which is non-qualified deferred compensation that is subject to Section 409A, shall commence on the day after the first to occur of (i) the day which is six months from the Termination Date and (ii) the date of Executive's death. For purposes of this Agreement, the terms "**terminate**," "**terminated**" and "**termination**" mean a termination of Executive's employment that constitutes a "separation from service" within the meaning of the default rules under Section 409A. For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(d) Executive shall not be required to mitigate the amount of any payment or benefit which is to be paid or provided by the Company pursuant to this Section. Any remuneration received by Executive from a third party following termination of the employment shall not apply to reduce the Company's obligations to make payments or provide benefits hereunder.

(e) Termination in the Event of Death. In the event of Executive's death, the Company shall pay to his estate, legal representatives or named beneficiary or beneficiaries (as directed by Executive in writing) his Base Salary for a period of 90 days following his death.

2.3. Exclusive Remedy. The foregoing payments and benefits continuation upon termination of Executive's employment shall constitute the exclusive severance payments and benefits continuation due Executive upon a termination of his employment.

2.4. Resignation from All Positions. Upon the termination of Executive's employment with the Company for any reason, Executive shall automatically cease to be an officer and employee of the Company and its direct and indirect subsidiaries and affiliates. Executive shall be required to execute such writings as are required to effectuate the foregoing, but Executive shall be treated for all purposes as having so resigned upon termination of Executive's employment, regardless of when or whether Executive executes any such documentation. If the Company is unable for any reason, after reasonable effort, to obtain Executive's signature on any documents needed to evidence or effect Executive's removal from such positions, Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys in fact to act for and on Executive's behalf to execute, verify, and file any such documents and to do all other lawfully permitted acts to further the purposes of this Section 2.4 with the same legal force and effect as if executed by Executive.

2.5. Cooperation. Following the termination of Executive's employment with the Company for any reason, Executive shall reasonably cooperate with the Company upon reasonable request of the Board and be reasonably available to the Company (taking into account Executive's personal and business commitments) with respect to matters arising out of Executive's services to the Company and its subsidiaries or divisions.

3. Unauthorized Disclosure; Non-Competition; Non-Solicitation; Interference with Business Relationships; Proprietary Rights.

3.1. Unauthorized Disclosure. Executive agrees and understands that in Executive's position with the Company, Executive has been and will be exposed to and has received and will receive information relating to the confidential affairs of the Company, including, without limitation, technical information, intellectual property, business and marketing plans, strategies, customer information, software, other information concerning the products, promotions, development, financing, expansion plans, business policies and practices of the Company and other forms of information considered by the Company to be confidential or in the nature of trade secrets (including, without limitation, ideas, research and development, know-how, formulas, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals) (collectively, "**Confidential Information**"). Confidential Information shall not include information that is generally known to the public or within the relevant trade or industry other than due to Executive's violation of this Section 3.1 or disclosure by a third party without binder of secrecy, provided that, to the best of your knowledge, such third party has no obligation to the company to maintain such information in confidence. Executive agrees that at all times during Executive's employment with the Company and thereafter, Executive shall not disclose such Confidential Information, either directly or indirectly, to any 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 (each, a "**Person**") without the prior written consent of the Company and shall not use or attempt to use any such information in any manner other than in connection with his employment with the Company or to enforce the terms of this Agreement, unless required by law to disclose such information, in which case Executive shall provide the Company with written notice of such requirement as far in advance of such anticipated disclosure as possible. This confidentiality covenant has no temporal, geographical or territorial restriction. Upon termination of Executive's employment with the Company, Executive shall promptly return to the Company all property, keys, notes, memoranda, writings, lists, files, reports, customer lists, correspondence, tapes, disks, cards, surveys, maps, logs, machines, technical data and any other tangible product or document which has been produced by, received by or otherwise submitted to Executive during or prior to Executive's employment with the Company relating to the confidential affairs of the Company, and any electronic or other copies thereof in his (or reasonably capable of being reduced to his) possession; provided, however, that nothing in this Agreement or elsewhere shall prevent Executive from retaining and utilizing: documents relating to his personal benefits, entitlements and obligations, documents relating to his personal tax obligations, and the like, and such other records and documents as may reasonably be approved by the Company. The foregoing shall not apply to any information in Executive's possession that is both related to a Permitted Activity and that is not Confidential Information.

3.2. Non-Competition. By and in consideration of the Company's entering into this Agreement, and in further consideration of Executive's exposure to the Company's Confidential Information, Executive agrees that Executive shall not, during the Employment Period and for one (1) year following the Termination Date (the "**Restriction Period**"), in any territory in which Executive provided services, had a material presence or influence, or about which Executive had Confidential Information concerning, during Employee's employment with the Company, directly or indirectly, engage or participate or have any ownership or other financial interest in, or in any way assist (as an officer, director, employee, agent, consultant, investor, partner, shareholder or otherwise) any Person to engage in, any business or enterprise that directly competes with the Company or its business; provided, however, that this provision shall not prohibit Executive from acquiring, solely as an investment, securities of any Person listed on a national securities exchange or regularly traded in the over-the-counter market (including any such Person that is subsequently taken private) of not more than one percent (1%), so long as Executive does not have, or exercise, any rights to manage or operate the business of such issuer other than rights as a stockholder thereof.

3.3. Non-Solicitation of Employees. During the Restriction Period, Executive shall not directly or indirectly contact, induce or solicit (or assist any Person to contact, induce or solicit) for employment any person who is or within 6 months prior to the date of such solicitation was an employee of the Company. The foregoing restriction will not apply to the placement of general advertisements or other notices of employment opportunities that are not targeted, directly or indirectly, to any current or former employee of the Company otherwise covered by the scope of such restriction so long as Executive is not personally involved in the recruitment or hiring of any such employee subsequent to such general advertisement or other notice.

3.4. Interference with Business Relationships. During the Restriction Period (other than in connection with carrying out his responsibilities for the Company), Executive shall not directly or indirectly induce or solicit (or assist any Person to induce or solicit) any customer or client of the Company or any member of the Company for which Executive had contact or dealings on behalf of the Company during the Employment Period to terminate its relationship or otherwise cease doing business in whole or in part with the Company, or directly or indirectly interfere with (or assist any Person to interfere with) any material relationship between the Company and any of its customers or clients for which Executive had contact or dealings on behalf of the Company so as to cause harm to the Company. The foregoing shall not apply to any Permitted Activity.

3.5. Confidentiality of Agreement. Other than with respect to information required to be disclosed by applicable law, Executive agrees not to disclose the terms of this Agreement to any Person; provided, however, Executive may disclose this Agreement and/or any of its terms to Executive's immediate family, financial advisors and attorneys, so long as Executive instructs every such Person to whom Executive makes such disclosure not to disclose the terms of this Agreement further. Any time after this Agreement is filed with the Securities and Exchange Commission or any other government agency by the Company and becomes a public record, this provision shall no longer apply.

3.6. Remedies. Executive agrees that any breach of the terms of this Section 3 would result in irreparable injury and damage to the Company for which the Company would have no adequate remedy at law; therefore, Executive also agrees that in the event of said breach or any threat of breach, the Company shall be entitled to an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach by Executive and/or any and all Persons acting for and/or with Executive, without having to prove damages, in addition to any other remedies to which the Company may be entitled at law or in equity, including, without limitation, the obligation of Executive to return any portion of the Severance Amount paid by the Company to Executive as set forth in the last sentence of this Section 3.6. The terms of this Section 3.6 shall not prevent the Company from pursuing any other available remedies for any breach or threatened breach hereof, including, without limitation, the recovery of damages from Executive. Executive and the Company further agree that the provisions of the covenants contained in this Section 3 are reasonable and necessary to protect the business of the Company because of Executive's access to Confidential Information and his material participation in the operation of the Company's businesses. In the event that Executive willfully and materially breaches any of the covenants set forth in this Section 3, then in addition to any injunctive relief, Executive will promptly return to the Company any portion of Severance Amount that the Company has paid to Executive.

3.7. **NOTICE OF IMMUNITY FROM LIABILITY FOR CONFIDENTIAL DISCLOSURE OF A TRADE SECRET TO THE GOVERNMENT OR IN A COURT FILING**: Notwithstanding anything herein to the contrary, under the Federal Defend Trade Secrets Act of 2016, Executive acknowledges that the Company has advised him that he may not be held criminally or civilly liable under any Federal or State trade secret law for any disclosure of a trade secret that (A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Executive acknowledges that the Company has also advised him that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding if the individual files any document containing the trade secret under seal and does not disclose the trade secret except pursuant to court order. The Company has also advised Executive that nothing herein is intended, or should be construed, to affect the immunities created by the Defend Trade Secrets Act of 2016, nor will anything be construed to prevent Executive from filing a charge with any state or federal agency, including, without limitation, the Securities and Exchange Commission, the Equal Employment Opportunity Commission, or any other government agency relating to Executive's employment with the Company or otherwise or participating in its investigation. Executive agrees, however, that in the event that he files or pursue any such charge, he waives and releases all rights to recover or receive any monetary damages or other forms of monetary relief arising from or related to such charge, except as otherwise prohibited by law.

4. No Conflicts. Executive represents and warrants that (A) he is not subject to any contract, arrangement, policy or understanding, or to any statute, governmental rule or regulation, that in any way limits his ability to enter into and fully perform his obligations under this Agreement and (B) he is not otherwise unable to enter into and fully perform his obligations under this Agreement.

5. Non-Disparagement. From and after the Effective Date and following the termination of Executive's employment with the Company, each of Company and Executive respectively agrees not to make any statement, whether direct or indirect, whether true or false, that is intended to become public, or that should reasonably be expected to become public, that criticizes, ridicules, disparages or is otherwise derogatory of the other party, any of its employees, officers, directors or stockholders. For clarification, this Section in no way limits Executive or Company from enforcing any of their respective rights under this Agreement or pursuing any claims against the other party, any of its employees, officers, directors or stockholders.

6. Withholding. All amounts paid to Executive under this Agreement during or following the Employment Period shall be subject to withholdings and other employment taxes imposed by applicable law. Executive shall be solely responsible for the payment of all taxes imposed on him relating to the payment or provision of any amounts or benefits hereunder.

7. Miscellaneous.

7.1. Indemnification. To the extent provided in the Company's By-Laws and Certificate of Incorporation, or, if greater, to the maximum extent permitted by law, the Company shall indemnify Executive for losses or damages incurred by Executive as a result of all causes of action arising from Executive's performance of duties for the benefit of the Company, including attorneys' fees, whether or not the claim is asserted during the Employment Period. Executive shall be covered under any directors' and officers' insurance that the Company maintains for its directors and officers in the same manner and on the same basis as the Company's other directors and officers.

7.2. Amendments and Waivers. This Agreement and any of the provisions hereof may be amended, waived (either generally or in a particular instance and either retroactively or prospectively), modified or supplemented, in whole or in part, only by written agreement signed by the Company and the Executive; provided, however, that the observance of any provision of this Agreement may be waived in writing by the party that will lose the benefit of such provision as a result of such waiver. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach, except as otherwise explicitly provided for in such waiver. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7.3. Assignment; Third-Party Beneficiaries. This Agreement, and Executive's rights and obligations hereunder, may not be assigned by Executive, and any purported assignment by Executive in violation hereof shall be null and void. Nothing in this Agreement shall confer upon any Person not a party, or the legal representatives of such Person, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, except (i) the personal representative of the deceased Executive may enforce the provisions hereof applicable in the event of the death of Executive and (ii) the Company may enforce the provisions of Section 3. The Company is authorized to assign this Agreement to a successor to substantially all of its assets.

7.4. Notices. Unless otherwise provided herein, all notices, requests, demands, claims and other communications provided for under the terms of this Agreement shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be sent by hand, by electronic transmission in PDF format or similar format, or by an internationally recognized private courier. Notices delivered by hand shall be deemed delivered when actually delivered. Notices given by an internationally recognized private courier shall be deemed delivered on the date delivery is promised by the courier. Notices given by electronic transmission shall be deemed given on the date transmitted. All notices shall be addressed as follows:

If to the Company:

Agrinamics, Inc.
[ ]
Attention: Matthew Liotta
Email: [ ]

With a copy to:

Perkins Coie LLP
1900 16th Street, Suite 1400
Denver, CO 80202
Attention: Timothy Fete
Email: TFete@perkinscoie.com

If to Executive:

Matt Liotta
[ ]
Email: [ ]

All such notices, requests, consents and other communications shall be deemed to have been given when received. Either party may change its address or e-mail address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

7.5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without giving effect to the conflicts of law principles thereof. THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED IN AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF COLORADO. EACH OF THE PARTIES HERETO AGREES TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT WITHIN THE STATE OF COLORADO**,** WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION ARISING UNDER OR RELATING TO THIS AGREEMENT, AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT, AND CONSENTS THAT ALL SERVICES OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO IT AT ITS ADDRESS AS SET FORTH IN SECTION 7.4, AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED WHEN RECEIVED. EACH OF THE PARTIES HERETO WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS AND WAIVES ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER. NOTHING IN THIS PARAGRAPH SHALL AFFECT THE RIGHTS OF THE PARTIES HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. If any legal action or other proceeding, including arbitration, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses, even if not taxable as court costs, incurred in that action or proceeding (including appeals), in addition to any other relief to which such party or parties may be entitled.

7.6. Severability. Whenever possible, each provision or portion of any provision of this Agreement, including those contained in Section 3 hereof, will be interpreted in such manner as to be effective and valid under applicable law but the invalidity or unenforceability of any provision or portion of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision or portion of any provision, in any other jurisdiction. In addition, should a court or arbitrator determine that any provision or portion of any provision of this Agreement, including those contained in Section 3 hereof, is not reasonable or valid, either in period of time, geographical area, or otherwise, the Parties hereto agree that such provision should be interpreted and enforced to the maximum extent which such court or arbitrator deems reasonable or valid.

7.7. Entire Agreement. From and after the Effective Date, this Agreement and any other agreement Executive is required to enter into by the Company related to the subject matter hereof constitutes the entire agreement between the Parties, and supersedes all prior representations, agreements and understandings (including any prior course of dealings), both written and oral, between the Parties with respect to the subject matter hereof.

7.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

7.9. Survivorship. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the Parties hereto, including, without limitation, with respect to Executive's obligations set forth in Section 3, shall survive such expiration or other termination to the extent necessary to carry out the intentions of the Parties under this Agreement.

7.10. Binding Effect. This Agreement shall inure to the benefit of, and be binding on, the successors and assigns of each of the Parties, including, without limitation, Executive's heirs and the personal representatives of Executive's estate and any successor to all or substantially all of the business and/or assets of the Company.

7.11. General Interpretive Principles. The name assigned this Agreement and headings of the sections, paragraphs, subparagraphs, clauses and subclauses of this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of any of the provisions hereof. Words of inclusion shall not be construed as terms of limitation herein, so that references to "include," "includes" and "including" shall not be limiting and shall be regarded as references to non-exclusive and non-characterizing illustrations. Any reference to a Section of the Internal Revenue Code of 1986, as amended, shall be deemed to include any successor to such Section.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Executive Employment Agreement as of the date first written above.

AGRINAMICS, INC.

By: /s/ Matt Liotta
Matt Liotta
President

EXECUTIVE

/s/ Matt Liotta
Matt Liotta

[Signature Page to Executive Employment Agreement]

AGRIFY

Developer of Premium Indoor Grow Solutions

August 5, 2020

Matt Liotta
1119 Ponte Vedra Blvd,
Ponte Vedra Beach, FL 32082

Re: Agreement

Dear Matt,

This letter sets forth the terms of the agreement (this "Agreement") between you and Agrify Corporation (the "Company") regarding your resignation from employment with the Company effective August 5, 2020 (the "Separation Date").

1. Resignation.

(a) You hereby resign from employment with Company as of the Separation Date, and acknowledge that you are no longer an employee, Chief Technology Officer, or other officer of the Company.

(b) You will continue to serve as a member of the Company's Board of Directors; however, you agree that (i) if the Company becomes a publicly-held company; and (ii) if for any reason a majority of the Board of Directors request you resign from the Board of Directors, you agree to resign from the Board within ten (10) days of the written request.

(c) Within three (3) business days of the Separation Date, the Company will pay you $6,440.88 for unused paid time off (PTO) accrued through the Separation Date. Such payment shall be made by wire transfer to a bank account designated by you. By signing this Agreement, you acknowledge that you have been paid for all other wages earned through the Separation Date.

(d) Within three (3) business days of the Separation Date, the Company will reimburse you $6,647.47 for business expenses incurred through the Separation Date. Such payment shall be made by wire transfer to a bank account designated by you.

2. Resignation Benefits. If you timely sign this Agreement and do not rescind it, the Company will provide you with resignation benefits (the "Resignation Benefits") in accordance with the following:

(a) The Company will continue to pay you your base salary at the semi-monthly rate of $4,604.17, less applicable withholding and deductions, for a period of six (6) months following the Separation Date (the "Severance Pay"). The Severance Pay shall be paid in accordance with the Company's regular payroll periods and procedures. The first payment of the Severance Pay shall be made on the first regular Company payroll date following the expiration of the rescission period described below, and shall include any retroactive amounts accrued.

(b) Provided you are eligible for and elect to continue your current coverage under the Company's group health insurance plan pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) or applicable state law, the Company will pay the premium for such coverage for a period of six (6) months following the Separation Date at the same rate to coverage for active employees.

(c) Vesting of the existing option grants issued to you by the Company prior to June 30, 2020 will continue (and, where so provided, accelerate) in accordance with the vesting schedules set forth in those grants for a period of six (6) months following the Separation Date. In the event the Company offers new or additional vesting-acceleration rights to employee option-holders of the Company during the six (6) months following the Separation Date, such new or additional rights will be offered to you on substantially the same terms.

(d) Within three (3) business days of the Separation Date, the Company will reimburse you in the amount of $25,000.00 for out-of-pocket moving expenses. Such payment shall be made by wire transfer to a bank account designated by you.

(e) The Resignation Benefits are provided in lieu of any other severance benefits to which you may be or claim to be entitled, including, but not limited to, the "Severance Amount" defined in Section 2.2(a) of the Executive Employment Agreement between you and the Company dated June 4, 2019 (the "Employment Agreement"). You acknowledge and agree that the Resignation Benefits are over and above anything owed to you by law, contract, or under the policies of the Company, and that they are being provided to you expressly in exchange for you entering into this Agreement.

(f) Provision of the Resignation Benefits is contingent on your compliance with all of your obligations under the Employment Agreement and this Agreement.

3. General Release.

(a) On behalf of yourself, your agents, assignees, attorneys, heirs, executors and administrators, you agree and do release and forever discharge the Company, its affiliates, parents, subsidiaries, officers, directors, employees, attorneys and agents, individually and in their official capacities (collectively, the "Releasees") from any and all claims and causes of action, known or unknown, including but not limited to those arising out of or relating to your employment by the Company or your separation from employment. This release includes, but is not limited to, any claims you may have under any federal, state, or local employment laws; any federal, state, or local laws prohibiting discrimination in employment; claims under any federal, state or local leave laws; claims for unpaid salary, wages, commissions, bonuses or other compensation; claims alleging any legal restriction on the Company's right to terminate its employees; any personal injury claims, including without limitation, wrongful discharge, detrimental reliance, violation of privacy rights, defamation, misrepresentation, tortious interference with business expectancy, emotional distress; or any claims alleging breach of the Employment Agreement or any express or implied contract. This release expressly includes, without limitation, any claims under the Age Discrimination in Employment Act of 1967 (29 USC §§ 621 et seq.) and the Massachusetts Wage Act (MGL ch. 149, §§ 148 & 150). This release does not waive: (i) your right to enforce the terms of this Agreement; (ii) any claims that cannot be released by law, or any future claims that have not arisen as of the date that you signed this Agreement; (iii) any rights you may have under the Company's employee benefit plans (such rights shall be governed by the terms of those plans and applicable law); or (iv) any rights you may have to indemnification and legal defense as a former employee and officer of the Company, pursuant to applicable law and Company bylaws, policies, and insurance policies.

(b) The Company hereby releases you from any and all claims and causes of action, known or unknown, pertaining to or arising out of or in any way related to your employment, except for claims (i) arising out of any activity by you that constitutes a crime (including fraudulent criminal activity) under any federal or state law, or (ii) arising out of any intentional and material unlawful conduct or fraud (whether civil or criminal) by you not known to or reasonably suspected by the Company as of the date hereof.

4. No Pending Suits. You acknowledge and agree that you have not filed any lawsuit or complaint against the Company or any of the other Releasees in any court of law or administrative agency that is pending as of the date you sign this Agreement. You further agree to waive any right to accept any monetary award obtained on your behalf from any Releasee by any local, state or federal governmental agency for any claim otherwise subject to the release set forth in this Agreement.

5. Employment Agreement. You acknowledge and agree that your post-employment obligations set forth in the Employment Agreement remain in full force and effect, including, but not limited to, those obligations described in the following sections of the Employment Agreement: 2.3 (Exclusive Remedy); 2.4 (Resignation from All Positions), 2.5 (Cooperation), 3 (Unauthorized Disclosure; Non-Competition; Non-Solicitation; Interference with Business Relationships; Proprietary Rights); and 5 (Non-Disparagement). The Company agrees that its officers and directors will not make any statement, whether direct or indirect, whether true or false, that is intended to become public, or that should reasonably be expected to become public, that criticizes, ridicules, disparages or is otherwise derogatory of you. The Company further agrees that you may engage in the business of creating environmental control boards for the indoor agriculture market, and continue consulting for Living Greens Farm, without violating the Employment Agreement and this Agreement, provided you do not solicit Agrify employees in violation of Section 3.3 of the Employment Agreement for a period of twelve (12) months following the Separation Date. Notwithstanding the foregoing, the Company hereby agrees that, if the Company fails to make any payment or to fulfill any obligation under Paragraph 2 of this Agreement (Resignation Benefits), then, in addition to any other remedies to which you may be entitled, you shall be released from your obligations under Paragraph 3.2 (Non-Competition) of the Employment Agreement.

6. Return of Company Property. By signing this Agreement, you agree to safeguard and maintain as confidential all Company property including, but not limited to, all keys, office equipment, documents, records, client files, written materials, electronic information, credit cards bearing the Company's name, and other Company property (originals or copies on whatever form) in your possession. You further agree to return all such Company property to the Company upon the cessation of your service as a member of the Company's Board of Directors. You agree that, following your return of the Company property to the Company, you will retain no copies of confidential documents, and that you will make no attempt to acquire such documents in the future.

7. Non-Admission. The existence and execution of this Agreement shall not be considered, and shall not be admissible in any proceeding, as an admission by you or the Company, its affiliates, officers, directors, employees, or agents, of any liability, error, violation or omission.

8. Message to Employees. You will have the opportunity to address the employees of the Company with the Company President, to offer a positive message about this management change and the positive future of the Company. This message will be mutually agreed to, in advance, by you and the President of the Company.

9. Confidentiality. You and the Company agree to maintain the terms of this Agreement as confidential information, subject to disclosure only pursuant to the requirements of the law. You may inform your immediate family and legal and financial advisors of the terms hereof on the basis that they shall similarly maintain the confidentiality of said terms.

10. Severability. The provisions of this Agreement are severable, and if for any reason any part hereof shall be found to be unenforceable, the remaining provisions shall be enforced in full.

11. Execution. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement. A facsimile or PDF signature shall be deemed an original and valid signature.

12. Miscellaneous.

(a) You agree that this is an individually negotiated agreement, and not part of any continuing arrangement, plan, scheme or program.

(b) This Agreement constitutes the entire agreement between you and the Company with respect to the subject matter hereof. You acknowledge that this Agreement constitutes an articulation of all pay and benefits to which you are entitled, and that you are not entitled to any other payments, benefits or privileges that have not been specifically included in this Agreement.

(c) You acknowledge that before signing this Agreement you were offered a period of at least forty-five (45) days to consider it and to consult with an attorney or other advisor of your choice and you were advised to do so.

(d) This Agreement may not be modified except in writing signed by you and Raymond Chang, President of the Company. This Agreement shall be construed under the laws of the Commonwealth of Massachusetts and shall be binding upon your heirs and personal representatives, and the successors and assigns of the Company. If any legal action or other proceeding, including arbitration, is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses, even if not taxable as court costs, incurred in that action or proceeding (including appeals), in addition to any other relief to which such party or parties may be entitled.

(e) Attached to this Agreement is an Appendix containing a list of the job titles and ages of those employees in the decisional unit who have and have not been selected for termination.

(f) You further acknowledge that you have entered into this Agreement knowingly and voluntarily, that you have read and understood this Agreement, and that no promises or representations have been made to you by any person to induce you to enter into this Agreement other than the express terms set forth herein.

(g) You may rescind your acceptance of this Agreement by providing written notice of your decision to rescind to:

Sheryl Elliott
Director, HR & Administration
101 Middlesex Tpke, #6, PMB 326
Burlington, MA 01803
[E-mail]

Your written notice of rescission must be received within seven (7) days of your execution of this Agreement, and this Agreement shall not become effective until this rescission period has expired without your having rescinded the Agreement.

****

Should you choose to accept this Agreement, please sign and date below where indicated and return it to me so that I receive it on or before September 18, 2020. Please do not hesitate to contact me if you have questions.

Very truly yours,

/s/ Raymond Chang
Raymond Chang
President

Accepted and Agreed:

/s/ Matt Liotta
Matt Liotta

Date:8/5/2020

Exhibit 10.9

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of _____, between Agrify Corporation (the "Company") and Robert Harrison ("Executive," together with the Company, the "Parties" and, each, a "Party").

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Chief Operating Officer and shall report exclusively and directly to the Chief Executive Officer of the Company. Executive shall perform the duties consistent with Executive's title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. The principal place of performance by Executive of Executive's duties hereunder shall be the Company's offices in Burlington, MA, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive's duties.

2. Term.

2.1 Term. Executive's employment hereunder shall commence on _____, 2021[1] (the "Commencement Date") and shall continue for a two-year period thereafter (the "Initial Term"), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive's employment has not previously been terminated, Executive's employment hereunder shall automatically be extended for successive two-year periods (each a "Renewal Term"), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the "Term" at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive's employment is terminated prior to the end of such Term), and the "Employment Period" means the period of Executive's employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive's termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

3.1 Salary. Executive shall receive a base salary (the "Base Salary") payable in substantially equal installments in accordance with the Company's normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive's starting Base Salary shall be at the annual rate of $250,000.

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1 Closing date of the IPO.

3.2 Discretionary Bonus. Executive shall be eligible to receive a discretionary performance-based bonus of up to $120,000 (a "Discretionary Bonus") with respect to each fiscal year of the Company (a "Fiscal Year") based on the terms and conditions hereof. Any Discretionary Bonus for the Fiscal Year in which the Commencement Date occurs (the "First Fiscal Year") will be prorated based on the number of days during the First Fiscal Year Executive was employed by the Company. A Discretionary Bonus, if any, will be determined and paid at the sole and complete discretion of the Company and may be based on a variety of factors, including, but not limited to, Executive's individual performance and the overall performance of the Company. To be eligible for a Discretionary Bonus, Executive must be employed by the Company at the time such Bonus is paid.

3.3 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites established from time to time by the Company on a basis that is no less favorable than such programs and perquisites are provided by the Company to the Company's other senior executives, subject to the eligibility requirements and other terms of such programs and perquisites, and subject to the Company's right to amend, terminate or take other action with respect to any such programs and perquisites.

3.4 Vacation and Other Paid Time Off. Executive shall be entitled to four (4) weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy.

3.5 Required Taxes and Withholdings. The Company shall withhold from any payments made to Executive (including, without limitation, those made under this Agreement) all federal, state, local or other taxes and withholdings as shall be required pursuant to any law or governmental regulation or ruling.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Company; (ii) subject to the proviso below, devote Executive's entire business time, energy and skill to Executive's services under this Agreement; (iii) use Executive's best efforts to promote and serve the interests of the Company and to perform Executive's duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise**,** except as provided below in this Section 4; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive's obligations and duties to the Company, provided, however, that the foregoing shall not prevent the Executive from managing Executive's personal affairs and passive personal investments, serving on the board of directors (or comparable body) of any third-party corporate entity that is not providing Competing Services (as defined in Section 10(f)(ii) hereof) and Executive obtains prior Company consent (which consent will not be unreasonably withheld), and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with the Executive's duties hereunder or create a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "Reimbursement Policies"). Subject to the provisions of Section 18.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "Disability" means a "disability" that entitles Executive to benefits under the applicable Company long-term disability plan covering Executive and, in the absence of such a plan, that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 180 days out of any 365 day period or for 120 consecutive days. In the event of any question as to the existence, extent or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied so as to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

6.3 For Cause by the Company.

(a) The Company may terminate Executive's employment for Cause, at any time, upon written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "Cause" means (i) the willful and continual failure by Executive to perform the duties or obligations of his employment with the Company or to carry out the reasonable and lawful directives of the Board (which directives are consistent with Executive's position); *provided* such failure remains uncured for a period of thirty (30) days after written notice describing the same is given to Executive; (ii) Executive's indictment for any crime which constitutes a felony or indictment for any crime involving fraud, misappropriation or embezzlement (other than any such crime involving the Company or any of its affiliates); (iii) any act of fraud, misappropriation or embezzlement involving the Company or any of its affiliates; (iv) any breach by Executive of the provisions of his Assignment of Inventions Agreement (as defined below) or a material breach or violation of this Agreement or any Company policy then in effect which remains uncured (if capable of being cured) for a period of thirty (30) days after written notice describing the same is given to Executive; or (v) any attempt by the Executive to improperly secure any personal profit in connection with the business of the Company or any of its affiliates. Notwithstanding anything contained herein to the contrary, in the event of Executive's termination without Cause, Executive shall be entitled to a reasonable opportunity to be heard by the Company's Board of Directors prior to the effective date of such termination.

6.4 Resignation by Executive for Good Reason. Executive may resign Executive's employment hereunder for Good Reason, at any time, provided that Executive provides the Company with ten (10) days' prior written notice of such resignation and such notice is given within thirty (30) days of when Good Reason first arises. For the purpose of this Agreement, "Good Reason" means (i) a material and substantial diminution in Executive's duties, authority, or responsibilities that would be inconsistent with Executive's position (other than while Executive is temporarily physically or mentally incapacitated, as permitted under Section 8 below or as required by applicable law), (ii) a material failure by the Company to pay Executive's compensation as provided for herein, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith; (iii) a change in the location of Executive's principal place of performance from other than that specified in Section 1 above; or (iv) other material breach by the Company of a material provision of this Agreement or any other agreement between the Company and Executive; provided (x) Executive has provided the Company with written notice reasonably detailing the grounds giving rise to Good Reason within thirty (30) days of the occurrence thereof or, if later, within thirty (30) days of the date upon which Executive first becomes aware of such grounds, and (y) the Company fails to cure such grounds within thirty (30) days after delivery to it of such written notice. Executive's date of termination in the event Executive resigns his employment for Good Reason shall be the effective date of Executive's notice of resignation for Good Reason, except that Company may waive all or any part of the above-referenced 10-day notice period or of the 30-day cure period, in which event Executive's date of termination shall be the last day of such notice or cure period that has not been waived or, if the entire notice or cure period has been waived, the date that Executive provided notice of the event giving rise to Good Reason or of his resignation for Good Reason. For the avoidance out doubt, Executive's exclusive remedy against the Company in the event the Company materially breaches this Agreement is to invoke the provisions of this Section 6.4 and Section 7 below.

6.5 Without Cause or Without Good Reason. The Company may terminate Executive's employment, without Cause, at any time, with or without prior notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may terminate Executive's employment without Good Reason upon at least thirty (30) days prior written notice to the Company without any liability. Termination of Executive's employment without Cause by the Company or without Good Reason by Executive shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 6.6 below.

6.6 Resignation from Other Positions. Upon termination of Executive's employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive's termination of employment, Executive, at the direction of the Board, shall immediately submit to the Company letter(s) of resignation for any such boards, offices and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices and appointments.

7. Effect of Termination of Employment.

7.1 Generally. In the event Executive's employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 13 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive's employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the "Accrued Obligations"): (i) Executive's Base Salary through and including the effective date of Executive's termination of employment (the "Termination Date"), which shall be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (ii) payment for accrued unused vacation time, subject to the Company's then current vacation policy, which shall also be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (iii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iv) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive's taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated by the Company pursuant to Section 6.5 above (without Cause) or in connection with a Change of Control (as defined in Section 10(f)(i) hereof), or by Executive pursuant to Section 6.4 hereof (Good Reason), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "Severance Benefits"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive payment of an amount (the "Severance Pay") equal to Executive's Base Salary immediately prior to the Termination Date (or, if Good Reason was attributable to the Company's failure to pay the minimum amount of Base Salary provided herein, such minimum amount) for the period of time equal to the greater of (A) one year and (B) from the day after the Termination Date through the last day of the Term (the "Severance Period"). In addition, if the Company terminates Executive's employment without Cause, or if Executive resigns for Good Reason, upon the occurrence of, or within thirty (30) days prior to, or within six (6) months following, the effective date of a Change of Control, all issued but unvested options shall immediately vest. The Severance Pay shall be paid in the form of salary continuation pursuant to the terms and conditions of Section 3.1 above, commencing within ninety (90) days following the Termination Date on the first regularly scheduled payroll date of the Company that is practicable after the effective date of the Separation Agreement (defined in Section 7.2(b) below), *except* that, if the Separation Agreement may be executed and/or revoked in a calendar year following the calendar year in which the Termination Date occurs, the Severance Pay shall commence on the first regularly scheduled payroll date of the Company in the calendar year in which the consideration or, if applicable, release revocation period ends to the extent necessary to comply with Section 409A (as defined in Section 18.2). The first such payment shall include payment for any payroll dates between the Termination Date and the date of such payment.

(ii) During the Severance Period until such time, if any, as Executive is eligible for group health insurance benefits from another employer, Executive shall be eligible to continue to participate in the Company's group health insurance benefits on the same terms and conditions as then applicable to current employees, *except* that, if Executive is not permitted to continue to participate in any such health insurance plans for any portion of the Severance Period as a result of the terms of such plans or applicable law and Executive elects to continue his or his dependents' health insurance benefits pursuant to COBRA, the Company will pay or reimburse Executive for the portion of the COBRA premium that is equal to the insurance premium the Company would pay if Executive was then an active employee of the Company. Following the Severance Period, should Executive elect to continue his or his dependents' health insurance benefits, Executive shall be responsible for the entire cost thereof. If the Company is unable to provide the benefit provided above in this paragraph without violating applicable health care discrimination laws, the Company shall pay Executive a gross amount equal to what the Company's cost would have been to provide such benefit.

(iii) Notwithstanding the foregoing, the aggregate amount described in this Section 7.2(a) shall be reduced by the present value of any other cash severance or termination benefits payable to Executive under any other plans, programs or arrangement of the Company, subject to compliance with Section 409A.

(iv) For the avoidance of doubt, Executive's sole and exclusive remedy upon a termination for which Executive is eligible for Severance Benefits under this Section 7.2 shall be the receipt of the Severance Benefits.

(b) Separation Agreement and Other Conditions for Severance Benefits.

(i) Provision of the Severance Benefits is conditioned on (i) Executive's continued compliance in all material respects with Executive's continuing obligations to the Company, including, without limitation, the terms of this Agreement and of the Confidentiality Agreement (defined in Section 9 below) that survive termination of Executive's employment with the Company, and (ii) Executive signing (without revoking if such right is provided under applicable law) a separation agreement and release in a form of that provided to Executive by the Company on or about the Termination Date (the "Separation Agreement"). Executive must so execute the Separation Agreement within 60 days following the Termination Date (or such shorter time as may be set forth in the Separation Agreement).

8. Notice of Termination. In the event Executive elects to terminate Executive's employment hereunder by resigning with or without Good Reason under Sections 6.4 or 6.5 above or by giving Notice of Non-Renewal under Section 6.6 above, Executive shall provide the Company with the applicable prior written notice of termination required by such Sections (the "Notice Period"). The Company may, in its discretion, waive all or any portion of such Notice Period. The Company may require that, during the Notice Period, or part or parts thereof, Executive does not do any of the following: (i) enter the Company's premises; (ii) undertake any work for any third party whether paid or unpaid and whether as an employee or otherwise; (iii) have any contact or communication with any client, customer or supplier of the Company; or (iv) have any contact or communication with any employee, officer, director, agent or consult of the Company. Additionally, during the Notice Period, or any part or parts thereof, the Company may require Executive to do any of the following: (i) perform special projects or perform duties not within Executive's normal duties (provided such duties are commensurate with Executive's position and title) or perform some but not all of Executive's normal duties; and (ii) keep the Company informed of Executive's whereabouts so that Executive can be contacted if the need arises for Executive to perform any duties provided by clause (i) of this sentence. The Company retains the right to terminate Executive's employment under Section 6.3 above during the Notice Period.

9. Confidentiality, Restrictive Covenant, Intellectual Property, Return of Company Property and Non-Disparagement. Company and Executive have entered into the Company's current standard Invention Assignment, Restrictive Covenants, and Confidentiality Agreement (the "Confidentiality Agreement"), a copy of which is annexed hereto as Exhibit A. The terms of the Confidentiality Agreement are hereby incorporated by reference into this Agreement, except that, to the extent there is an irreconcilable conflict between the terms of this Agreement and those of the Confidentiality Agreement, the terms of this Agreement shall govern. Executive's execution and compliance with the terms of the Confidentiality Agreement is a material term of this Agreement, upon which Executive's employment and continued employment with the Company is conditioned.

10. Confidentiality, Non-Solicitation and Non-Competition.

10.1 Representations and Acknowledgements. For purposes of Sections 10-13 and 15 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "Company Affiliates"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Customers (defined below) and Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Customers and Suppliers; (iii) the Company's Confidential Information and close Customer and Supplier relationships must be protected; (iv) this Section 10 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 10; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Customer and Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

10.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (defined 10.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other governmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so required, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 10.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 10.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Executive hereby represents and warrants that it shall assist the Company in remedying any such unauthorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "Confidential Information" means all information of a confidential or proprietary nature regarding the Company, its business or properties that the Company has furnished or furnishes to Executive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elaborations, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information regarding pay, bonuses, benefits and perquisites offered to or received by employees of the Company, as well as non-public information regarding the unique and special skills of specific employees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confidentiality obligation; or (iii) which was developed by Executive outside or independent of Executive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowledges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

10.3 Non-Interference, Non-Competition and Non-Diversion.

(a) No Interference with Customers. Executive agrees that, during the Restricted Period (defined in Section 10.3(f) below), regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly (defined below), actually or attempt to, (i) solicit, induce, or cause any Customer to terminate, reduce or refrain from renewing or extending its contractual or other business relationship with the Company; (ii) solicit, induce or cause any Customer to become a customer of or enter into any contractual or other relationship with Executive or any other person or entity for Competing Services (as defined in Section 10.3(f) below); and/or (iii) offer or provide to any Customer any Competing Services.

(b) No Interference with Employees and Other Suppliers. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to: (i) solicit, induce, or cause any Supplier of the Company to terminate, reduce or refrain from renewing or extending such person's or entity's business or employment relationship with the Company; (ii) solicit, induce or cause any employee of the Company to engage in Competing Services; or (iii) employ or otherwise engage as an employee, independent contractor or consultant (1) any employee of the Company or (2) any person who was employed by the Company within the then prior six-month period.

(c) Non-Diversion. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, be employed or engaged as an independent contractor or otherwise by any person or entity that, during the Employment Period, was an actual or potential Customer of Company to perform services the same or similar to those Executive provided to Company and/or the Company provided or offered to provide to such actual or potential Customer.

(d) Non-Competition. During the Employment Period and thereafter for a period equal to the greater of (A) six months and (B) from the day after the Termination Date through the last day of the Term, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to, engage in the business of providing Competing Services within the Territory (as defined in Section 10.3(f) below).

(e) Notice to Subsequent Employers. Upon commencing any engagement as a service provider (whether as an employee, independent contractor or otherwise) during the Restricted Period, Executive shall expressly advise each new employer and each other new recipient of Executive's services (each, a "Service Recipient") of Executive's continuing obligations to the Company under this Agreement and, in particular, this Section 10. Further, Executive hereby consents to the Company providing such notification to each such Service Recipient.

(f) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning.

(i) "Change of Control" means (A) the acquisition by a third party (or more than one party acting as a group) of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction; (B) a merger, consolidation or similar transaction following which the stockholders of the Company immediately prior thereto do not own at least fifty percent (50%) of the combined outstanding voting power of the surviving entity (or that entity's parent) in such merger, consolidation or similar transaction; or (c) the sale or other disposition of all or substantially all of the assets of the Company.

(ii) "Competing Services" means products or services that are the same, similar or otherwise in competition with the products and services of the Company with which Executive was involved or about which Executive acquired Confidential Information.

(iii) "Customer" means any company or individual: (i) who purchased products or services from the Company whom Executive contacted or served during the Employment Period, for whom Executive supervised contact or service during the Employment Period or about whom Executive acquired Confidential Information; and/or (ii) who was a potential customer of the Company within the one year immediately preceding the Termination Date and (A) about whom Executive acquired Confidential Information or (B) who contacted Executive, whom Executive contacted, or for whom Executive supervised contact regarding the potential purchase of products or services of the Company.

(iv) "directly or indirectly" as it relates to an activity taken by Executive includes any activity taken directly by Executive or indirectly on Executive's behalf, including any activity taken in conjunction with any other person or entity, and including any activity taken by Executive as an employee, agent, consultant, independent contractor, officer, director, principal, shareholder, equity holder, partner, member, joint venturer, lender, investor or otherwise, except that nothing in this Agreement shall prohibit Executive from being a passive holder, for investment purposes only, of not more than two percent (2%) of the outstanding stock of any company listed on a national securities exchange, or actively traded in a national over-the-counter market.

(v) "Restricted Period" means the Employment Period and for a period thereafter equaling the greater of (A) one year and (B) the duration of any Severance Period, except that such period shall be extended for any period therein during which Executive was in violation of any provision of this Section 10.3.

(vi) "Supplier" means any supplier of goods, services, funding, leads or prospects to the Company, including as an employee, independent contractor or in any other capacity.

(vii) "Territory" means any state in which the Company is doing business or in which it is contemplating to do business pursuant to a then current business plan.

11. Intellectual Property.

11.1 The Company's Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive's employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive's regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company ("Company Intellectual Property") shall be deemed "work for hire" and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be "work-for-hire," then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights ("Moral Rights"), including, without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral" or the like, that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such Moral Rights cannot be assigned under applicable law, Executive hereby ratifies and consents to any action that may be taken with respect to such Moral Rights by or on behalf of the Company and waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, "Intellectual Property" shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

11.2 Waiver. In the event that Executive owns or claims any rights to Company Intellectual Property that cannot be assigned to the Company, Executive irrevocably waives all claims and the enforcement of all such rights against the Company, and their respective officers directors, assigns and licensees, and agrees, at the Company's request and expense, to consent to and join in any action to enforce the Company's interests in such Company Intellectual Property. As to any rights to Company Intellectual Property that cannot be assigned to the Company or waived by Executive, Executive irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to license and sublicense, to reproduce, create derivative works, distribute, publicly perform and publicly display by all means now known or later developed, any and all such Company Intellectual Property.

11.3 Cooperation Regarding Intellectual Property. Executive agrees to assist the Company, and to take all reasonable steps, with securing patents, registering copyrights and trademarks, and obtaining any other forms of protection for the Company Intellectual Property in the United States and elsewhere. In particular, at the Company's expense (except as noted in clause (i) below), Executive shall forthwith upon request of the Company execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and take all such other action as the Company may reasonably request in order (i) to vest in the Company all of Executive's right, title, and interest in and to such Company Intellectual Property, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances ("Liens") (and Executive agrees to take such action, at Executive's expense, as is necessary to remove all such Liens) and (ii), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefor in any and all countries in such name as the Company shall determine. In the event that Executive is unable or unavailable or shall refuse to sign any lawful or necessary documents required in order for the Company to apply for and obtain any copyright or patent with respect to any work performed by Executive in the course of his employment with the Company (including applications or renewals, extensions, divisions or continuations), Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys-in-fact to act for and in Executive's behalf, and in Executive's place and stead, to execute and file any such applications or documents and to do all other lawfully permitted acts to further the prosecution and issuance of copyrights and patents with respect to such Company Intellectual Property with the same legal force and effect as if executed or undertaken by Executive.

11.4 No infringement. Executive represents and warrants to the Company that all Intellectual Property Executive delivers to the Company shall be original and shall not infringe upon or violate any patent, copyright or proprietary right of any person or third party.

11.5 License to Prior Invention. If Executive in the course of Executive's employment for the Company incorporates into a Company product Intellectual Property that Executive has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Executive's employment with the Company in which Executive has a property right (each, a "Prior Invention"), Executive hereby grants to the Company a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use and sell such Prior Invention. Executive hereby represents and warrants that all Prior Inventions have been listed by Executive on Exhibit B hereto or, if no such list is attached, that there are no Prior Inventions. Executive will not incorporate any Intellectual Property owned by any third party into any Company Intellectual Property without the Company's prior written permission.

11.6 Severability. To the extent this Agreement is required to be construed in accordance with laws of any state which precludes as a requirement in an employee agreement the assignment of certain classes of inventions made by an employee, this Section 11 will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes.

12. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

13. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 13. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

14. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photographs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Executive acknowledges and agrees that Executive has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages and voice messages) and that Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

15. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 10 through 13 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 10 through 13, restraining Executive from engaging in activities prohibited by Sections 10 through 13 and such other relief as may be required specifically to enforce any of the provisions in Sections 10 through 13. Executive further agrees that, if Executive breaches any of the provisions in Sections 10 through 13 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 10 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

16. Representations Regarding Prior Work and Legal Obligations.

16.1 Executive represents and warrants that Executive has no agreement or other legal obligation with any prior employer, or any other person or entity, that restricts Executive's ability to accept employment with the Company. Executive further represents and warrants that Executive is not a party to any agreement (including, without limitation, a non-competition, non-solicitation, no hire or similar agreement) and has no other legal obligation that restricts in any way Executive's ability to perform Executive's duties and satisfy Executive's other obligations to the Company, including, without limitation, those under this Agreement.

16.2 Executive represents and acknowledges that Executive has been instructed by the Company that at no time should Executive divulge to or use for the benefit of the Company or any Company Affiliates any trade secret or confidential or proprietary information of any previous employer or entity with which Executive was affiliated or of any other third-party. Executive expressly represents and warrants that Executive has not divulged or used any such information for the benefit of the Company or Company Affiliates and will not do so.

16.3 Executive represents and agrees that the Executive has not and will not misappropriate any intellectual property belonging to any other person or entity.

16.4 Executive acknowledges that the Company is basing important business decisions on these representations, agreements and warranties, and Executive affirms that all of the statements included herein are true. Executive agrees that Executive shall defend, indemnify and hold the Company harmless from any liability, expense (including attorneys' fees) or claim by any person in any way arising out of, relating to, or in connection with a breach and/or the falsity of any of the representations, agreements and warranties made by Executive in this Section 16.

17. Indemnification and Liability Insurance. The Company shall indemnify Executive to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys' fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses), and Executive will be entitled to the protection of any insurance policies that the Company may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or sustained by Executive in connection with any action, suit or proceeding brought by a third-party to which Executive may be made a party by reason of Executive's being or having been a director, officer or employee of the Company or any of its affiliates, or Executive's serving or having served any other enterprise as a director, officer or employee at the request of the Company (other than any dispute, claim or controversy arising under or relating to this Agreement), provided that he acted within the scope of his duties as a director, officer or employee of the Company. The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof; provided, however, that the Company may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the Company determines in good faith that such insurance is not available or is available only at unreasonable expense.

18. Miscellaneous Provisions.

18.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

18.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15th day of the third month (*i.e.*, 2½ months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to the Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A, and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

18.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

18.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

18.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

18.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to New York County, New York and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

18.7 Mutual Waiver of Jury Trial. Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

18.8 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to [_____], or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

18.9 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment hereunder, including without limitation Sections 10-15 and 18 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

18.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

18.11 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

18.12 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 10 above, and (iii) Executive is executing this Agreement voluntarily, knowingly and willingly and without duress.

18.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

18.14 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

18.15 Counterparts. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies, electronically scanned copies and other facsimiles of this Agreement (including such signed counterparts) may be used in lieu of the originals for any purpose.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

ROBERT HARRISON

AGRIFY CORPORATION

By: _____
Name:
Title:

[Signature page to Employment Agreement.]

EXHIBIT A

EXHIBIT B

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description

Exhibit 10.10

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement"), dated as of _____, between Agrify Corporation (the "Company") and Richard Stamm ("Executive," together with the Company, the "Parties" and, each, a "Party").

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Vice President, General Counsel and Secretary and shall report exclusively and directly to the Chief Executive Officer of the Company. Executive shall perform the duties consistent with Executive's title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. The principal place of performance by Executive of Executive's duties hereunder shall be the Company's offices in Burlington, MA, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive's duties.

2. Term.

2.1 Term. Executive's employment hereunder shall commence on _____, 2021[1] (the "Commencement Date") and shall continue for a two-year period thereafter (the "Initial Term"), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive's employment has not previously been terminated, Executive's employment hereunder shall automatically be extended for successive two-year periods (each a "Renewal Term"), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the "Term" at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive's employment is terminated prior to the end of such Term), and the "Employment Period" means the period of Executive's employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive's termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

3.1 Salary. Executive shall receive a base salary (the "Base Salary") payable in substantially equal installments in accordance with the Company's normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive's starting Base Salary shall be at the annual rate of $250,000.

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1 Closing date of the IPO.

3.2 Discretionary Bonus. Executive shall be eligible to receive a discretionary performance-based bonus of up to $100,000 (a "Discretionary Bonus") with respect to each fiscal year of the Company (a "Fiscal Year") based on the terms and conditions hereof. Any Discretionary Bonus for the Fiscal Year in which the Commencement Date occurs (the "First Fiscal Year") will be prorated based on the number of days during the First Fiscal Year Executive was employed by the Company. A Discretionary Bonus, if any, will be determined and paid at the sole and complete discretion of the Company and may be based on a variety of factors, including, but not limited to, Executive's individual performance and the overall performance of the Company. To be eligible for a Discretionary Bonus, Executive must be employed by the Company at the time such Bonus is paid.

3.3 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites established from time to time by the Company on a basis that is no less favorable than such programs and perquisites are provided by the Company to the Company's other senior executives, subject to the eligibility requirements and other terms of such programs and perquisites, and subject to the Company's right to amend, terminate or take other action with respect to any such programs and perquisites.

3.4 Vacation and Other Paid Time Off. Executive shall be entitled to four (4) weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy.

3.5 Required Taxes and Withholdings. The Company shall withhold from any payments made to Executive (including, without limitation, those made under this Agreement) all federal, state, local or other taxes and withholdings as shall be required pursuant to any law or governmental regulation or ruling.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Company; (ii) subject to the proviso below, devote Executive's entire business time, energy and skill to Executive's services under this Agreement; (iii) use Executive's best efforts to promote and serve the interests of the Company and to perform Executive's duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise**,** except as provided below in this Section 4; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive's obligations and duties to the Company, provided, however, that the foregoing shall not prevent the Executive from managing Executive's personal affairs and passive personal investments, serving on the board of directors (or comparable body) of any third-party corporate entity that is not providing Competing Services (as defined in Section 10(f)(ii) hereof) and Executive obtains prior Company consent (which consent will not be unreasonably withheld), and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with the Executive's duties hereunder or create a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "Reimbursement Policies"). Subject to the provisions of Section 18.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "Disability" means a "disability" that entitles Executive to benefits under the applicable Company long-term disability plan covering Executive and, in the absence of such a plan, that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 180 days out of any 365 day period or for 120 consecutive days. In the event of any question as to the existence, extent or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied so as to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

6.3 For Cause by the Company.

(a) The Company may terminate Executive's employment for Cause, at any time, upon written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "Cause" means (i) the willful and continual failure by Executive to perform the duties or obligations of his employment with the Company or to carry out the reasonable and lawful directives of the Board (which directives are consistent with Executive's position); *provided* such failure remains uncured for a period of thirty (30) days after written notice describing the same is given to Executive; (ii) Executive's indictment for any crime which constitutes a felony or indictment for any crime involving fraud, misappropriation or embezzlement (other than any such crime involving the Company or any of its affiliates); (iii) any act of fraud, misappropriation or embezzlement involving the Company or any of its affiliates; (iv) any breach by Executive of the provisions of his Assignment of Inventions Agreement (as defined below) or a material breach or violation of this Agreement or any Company policy then in effect which remains uncured (if capable of being cured) for a period of thirty (30) days after written notice describing the same is given to Executive; or (v) any attempt by the Executive to improperly secure any personal profit in connection with the business of the Company or any of its affiliates. Notwithstanding anything contained herein to the contrary, in the event of Executive's termination without Cause, Executive shall be entitled to a reasonable opportunity to be heard by the Company's Board of Directors prior to the effective date of such termination.

6.4 Resignation by Executive for Good Reason. Executive may resign Executive's employment hereunder for Good Reason, at any time, provided that Executive provides the Company with ten (10) days' prior written notice of such resignation and such notice is given within thirty (30) days of when Good Reason first arises. For the purpose of this Agreement, "Good Reason" means (i) a material and substantial diminution in Executive's duties, authority, or responsibilities that would be inconsistent with Executive's position (other than while Executive is temporarily physically or mentally incapacitated, as permitted under Section 8 below or as required by applicable law), (ii) a material failure by the Company to pay Executive's compensation as provided for herein, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith; (iii) a change in the location of Executive's principal place of performance from other than that specified in Section 1 above; or (iv) other material breach by the Company of a material provision of this Agreement or any other agreement between the Company and Executive; provided (x) Executive has provided the Company with written notice reasonably detailing the grounds giving rise to Good Reason within thirty (30) days of the occurrence thereof or, if later, within thirty (30) days of the date upon which Executive first becomes aware of such grounds, and (y) the Company fails to cure such grounds within thirty (30) days after delivery to it of such written notice. Executive's date of termination in the event Executive resigns his employment for Good Reason shall be the effective date of Executive's notice of resignation for Good Reason, except that Company may waive all or any part of the above-referenced 10-day notice period or of the 30-day cure period, in which event Executive's date of termination shall be the last day of such notice or cure period that has not been waived or, if the entire notice or cure period has been waived, the date that Executive provided notice of the event giving rise to Good Reason or of his resignation for Good Reason. For the avoidance out doubt, Executive's exclusive remedy against the Company in the event the Company materially breaches this Agreement is to invoke the provisions of this Section 6.4 and Section 7 below.

6.5 Without Cause or Without Good Reason. The Company may terminate Executive's employment, without Cause, at any time, with or without prior notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may terminate Executive's employment without Good Reason upon at least thirty (30) days prior written notice to the Company without any liability. Termination of Executive's employment without Cause by the Company or without Good Reason by Executive shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 6.6 below.

6.6 Resignation from Other Positions. Upon termination of Executive's employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive's termination of employment, Executive, at the direction of the Board, shall immediately submit to the Company letter(s) of resignation for any such boards, offices and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices and appointments.

7. Effect of Termination of Employment.

7.1 Generally. In the event Executive's employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 13 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive's employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the "Accrued Obligations"): (i) Executive's Base Salary through and including the effective date of Executive's termination of employment (the "Termination Date"), which shall be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (ii) payment for accrued unused vacation time, subject to the Company's then current vacation policy, which shall also be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (iii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iv) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive's taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated by the Company pursuant to Section 6.5 above (without Cause) or in connection with a Change of Control (as defined in Section 10(f)(i) hereof), or by Executive pursuant to Section 6.4 hereof (Good Reason), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "Severance Benefits"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive payment of an amount (the "Severance Pay") equal to Executive's Base Salary immediately prior to the Termination Date (or, if Good Reason was attributable to the Company's failure to pay the minimum amount of Base Salary provided herein, such minimum amount) for the period of time equal to the greater of (A) one year and (B) from the day after the Termination Date through the last day of the Term (the "Severance Period"). In addition, if the Company terminates Executive's employment without Cause, or if Executive resigns for Good Reason, upon the occurrence of, or within thirty (30) days prior to, or within six (6) months following, the effective date of a Change of Control, all issued but unvested options shall immediately vest. The Severance Pay shall be paid in the form of salary continuation pursuant to the terms and conditions of Section 3.1 above, commencing within ninety (90) days following the Termination Date on the first regularly scheduled payroll date of the Company that is practicable after the effective date of the Separation Agreement (defined in Section 7.2(b) below), *except* that, if the Separation Agreement may be executed and/or revoked in a calendar year following the calendar year in which the Termination Date occurs, the Severance Pay shall commence on the first regularly scheduled payroll date of the Company in the calendar year in which the consideration or, if applicable, release revocation period ends to the extent necessary to comply with Section 409A (as defined in Section 18.2). The first such payment shall include payment for any payroll dates between the Termination Date and the date of such payment.

(ii) During the Severance Period until such time, if any, as Executive is eligible for group health insurance benefits from another employer, Executive shall be eligible to continue to participate in the Company's group health insurance benefits on the same terms and conditions as then applicable to current employees, *except* that, if Executive is not permitted to continue to participate in any such health insurance plans for any portion of the Severance Period as a result of the terms of such plans or applicable law and Executive elects to continue his or his dependents' health insurance benefits pursuant to COBRA, the Company will pay or reimburse Executive for the portion of the COBRA premium that is equal to the insurance premium the Company would pay if Executive was then an active employee of the Company. Following the Severance Period, should Executive elect to continue his or his dependents' health insurance benefits, Executive shall be responsible for the entire cost thereof. If the Company is unable to provide the benefit provided above in this paragraph without violating applicable health care discrimination laws, the Company shall pay Executive a gross amount equal to what the Company's cost would have been to provide such benefit.

(iii) Notwithstanding the foregoing, the aggregate amount described in this Section 7.2(a) shall be reduced by the present value of any other cash severance or termination benefits payable to Executive under any other plans, programs or arrangement of the Company, subject to compliance with Section 409A.

(iv) For the avoidance of doubt, Executive's sole and exclusive remedy upon a termination for which Executive is eligible for Severance Benefits under this Section 7.2 shall be the receipt of the Severance Benefits.

(b) Separation Agreement and Other Conditions for Severance Benefits.

(i) Provision of the Severance Benefits is conditioned on (i) Executive's continued compliance in all material respects with Executive's continuing obligations to the Company, including, without limitation, the terms of this Agreement and of the Confidentiality Agreement (defined in Section 9 below) that survive termination of Executive's employment with the Company, and (ii) Executive signing (without revoking if such right is provided under applicable law) a separation agreement and release in a form of that provided to Executive by the Company on or about the Termination Date (the "Separation Agreement"). Executive must so execute the Separation Agreement within 60 days following the Termination Date (or such shorter time as may be set forth in the Separation Agreement).

8. Notice of Termination. In the event Executive elects to terminate Executive's employment hereunder by resigning with or without Good Reason under Sections 6.4 or 6.5 above or by giving Notice of Non-Renewal under Section 6.6 above, Executive shall provide the Company with the applicable prior written notice of termination required by such Sections (the "Notice Period"). The Company may, in its discretion, waive all or any portion of such Notice Period. The Company may require that, during the Notice Period, or part or parts thereof, Executive does not do any of the following: (i) enter the Company's premises; (ii) undertake any work for any third party whether paid or unpaid and whether as an employee or otherwise; (iii) have any contact or communication with any client, customer or supplier of the Company; or (iv) have any contact or communication with any employee, officer, director, agent or consult of the Company. Additionally, during the Notice Period, or any part or parts thereof, the Company may require Executive to do any of the following: (i) perform special projects or perform duties not within Executive's normal duties (provided such duties are commensurate with Executive's position and title) or perform some but not all of Executive's normal duties; and (ii) keep the Company informed of Executive's whereabouts so that Executive can be contacted if the need arises for Executive to perform any duties provided by clause (i) of this sentence. The Company retains the right to terminate Executive's employment under Section 6.3 above during the Notice Period.

9. Confidentiality, Restrictive Covenant, Intellectual Property, Return of Company Property and Non-Disparagement. Company and Executive have entered into the Company's current standard Invention Assignment, Restrictive Covenants, and Confidentiality Agreement (the "Confidentiality Agreement"), a copy of which is annexed hereto as Exhibit A. The terms of the Confidentiality Agreement are hereby incorporated by reference into this Agreement, except that, to the extent there is an irreconcilable conflict between the terms of this Agreement and those of the Confidentiality Agreement, the terms of this Agreement shall govern. Executive's execution and compliance with the terms of the Confidentiality Agreement is a material term of this Agreement, upon which Executive's employment and continued employment with the Company is conditioned.

10. Confidentiality, Non-Solicitation and Non-Competition.

10.1 Representations and Acknowledgements. For purposes of Sections 10-13 and 15 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "Company Affiliates"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Customers (defined below) and Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Customers and Suppliers; (iii) the Company's Confidential Information and close Customer and Supplier relationships must be protected; (iv) this Section 10 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 10; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Customer and Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

10.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (defined 10.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other governmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so required, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 10.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 10.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Executive hereby represents and warrants that it shall assist the Company in remedying any such unauthorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "Confidential Information" means all information of a confidential or proprietary nature regarding the Company, its business or properties that the Company has furnished or furnishes to Executive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elaborations, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information regarding pay, bonuses, benefits and perquisites offered to or received by employees of the Company, as well as non-public information regarding the unique and special skills of specific employees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confidentiality obligation; or (iii) which was developed by Executive outside or independent of Executive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowledges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

10.3 Non-Interference, Non-Competition and Non-Diversion.

(a) No Interference with Customers. Executive agrees that, during the Restricted Period (defined in Section 10.3(f) below), regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly (defined below), actually or attempt to, (i) solicit, induce, or cause any Customer to terminate, reduce or refrain from renewing or extending its contractual or other business relationship with the Company; (ii) solicit, induce or cause any Customer to become a customer of or enter into any contractual or other relationship with Executive or any other person or entity for Competing Services (as defined in Section 10.3(f) below); and/or (iii) offer or provide to any Customer any Competing Services.

(b) No Interference with Employees and Other Suppliers. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to: (i) solicit, induce, or cause any Supplier of the Company to terminate, reduce or refrain from renewing or extending such person's or entity's business or employment relationship with the Company; (ii) solicit, induce or cause any employee of the Company to engage in Competing Services; or (iii) employ or otherwise engage as an employee, independent contractor or consultant (1) any employee of the Company or (2) any person who was employed by the Company within the then prior six-month period.

(c) Non-Diversion. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, be employed or engaged as an independent contractor or otherwise by any person or entity that, during the Employment Period, was an actual or potential Customer of Company to perform services the same or similar to those Executive provided to Company and/or the Company provided or offered to provide to such actual or potential Customer.

(d) Non-Competition. During the Employment Period and thereafter for a period equal to the greater of (A) six months and (B) from the day after the Termination Date through the last day of the Term, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to, engage in the business of providing Competing Services within the Territory (as defined in Section 10.3(f) below).

(e) Notice to Subsequent Employers. Upon commencing any engagement as a service provider (whether as an employee, independent contractor or otherwise) during the Restricted Period, Executive shall expressly advise each new employer and each other new recipient of Executive's services (each, a "Service Recipient") of Executive's continuing obligations to the Company under this Agreement and, in particular, this Section 10. Further, Executive hereby consents to the Company providing such notification to each such Service Recipient.

(f) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning.

(i) "Change of Control" means (A) the acquisition by a third party (or more than one party acting as a group) of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction; (B) a merger, consolidation or similar transaction following which the stockholders of the Company immediately prior thereto do not own at least fifty percent (50%) of the combined outstanding voting power of the surviving entity (or that entity's parent) in such merger, consolidation or similar transaction; or (c) the sale or other disposition of all or substantially all of the assets of the Company.

(ii) "Competing Services" means products or services that are the same, similar or otherwise in competition with the products and services of the Company with which Executive was involved or about which Executive acquired Confidential Information.

(iii) "Customer" means any company or individual: (i) who purchased products or services from the Company whom Executive contacted or served during the Employment Period, for whom Executive supervised contact or service during the Employment Period or about whom Executive acquired Confidential Information; and/or (ii) who was a potential customer of the Company within the one year immediately preceding the Termination Date and (A) about whom Executive acquired Confidential Information or (B) who contacted Executive, whom Executive contacted, or for whom Executive supervised contact regarding the potential purchase of products or services of the Company.

(iv) "directly or indirectly" as it relates to an activity taken by Executive includes any activity taken directly by Executive or indirectly on Executive's behalf, including any activity taken in conjunction with any other person or entity, and including any activity taken by Executive as an employee, agent, consultant, independent contractor, officer, director, principal, shareholder, equity holder, partner, member, joint venturer, lender, investor or otherwise, except that nothing in this Agreement shall prohibit Executive from being a passive holder, for investment purposes only, of not more than two percent (2%) of the outstanding stock of any company listed on a national securities exchange, or actively traded in a national over-the-counter market.

(v) "Restricted Period" means the Employment Period and for a period thereafter equaling the greater of (A) one year and (B) the duration of any Severance Period, except that such period shall be extended for any period therein during which Executive was in violation of any provision of this Section 10.3.

(vi) "Supplier" means any supplier of goods, services, funding, leads or prospects to the Company, including as an employee, independent contractor or in any other capacity.

(vii) "Territory" means any state in which the Company is doing business or in which it is contemplating to do business pursuant to a then current business plan.

11. Intellectual Property.

11.1 The Company's Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive's employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive's regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company ("Company Intellectual Property") shall be deemed "work for hire" and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be "work-for-hire," then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights ("Moral Rights"), including, without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral" or the like, that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such Moral Rights cannot be assigned under applicable law, Executive hereby ratifies and consents to any action that may be taken with respect to such Moral Rights by or on behalf of the Company and waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, "Intellectual Property" shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

11.2 Waiver. In the event that Executive owns or claims any rights to Company Intellectual Property that cannot be assigned to the Company, Executive irrevocably waives all claims and the enforcement of all such rights against the Company, and their respective officers directors, assigns and licensees, and agrees, at the Company's request and expense, to consent to and join in any action to enforce the Company's interests in such Company Intellectual Property. As to any rights to Company Intellectual Property that cannot be assigned to the Company or waived by Executive, Executive irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to license and sublicense, to reproduce, create derivative works, distribute, publicly perform and publicly display by all means now known or later developed, any and all such Company Intellectual Property.

11.3 Cooperation Regarding Intellectual Property. Executive agrees to assist the Company, and to take all reasonable steps, with securing patents, registering copyrights and trademarks, and obtaining any other forms of protection for the Company Intellectual Property in the United States and elsewhere. In particular, at the Company's expense (except as noted in clause (i) below), Executive shall forthwith upon request of the Company execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and take all such other action as the Company may reasonably request in order (i) to vest in the Company all of Executive's right, title, and interest in and to such Company Intellectual Property, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances ("Liens") (and Executive agrees to take such action, at Executive's expense, as is necessary to remove all such Liens) and (ii), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefor in any and all countries in such name as the Company shall determine. In the event that Executive is unable or unavailable or shall refuse to sign any lawful or necessary documents required in order for the Company to apply for and obtain any copyright or patent with respect to any work performed by Executive in the course of his employment with the Company (including applications or renewals, extensions, divisions or continuations), Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys-in-fact to act for and in Executive's behalf, and in Executive's place and stead, to execute and file any such applications or documents and to do all other lawfully permitted acts to further the prosecution and issuance of copyrights and patents with respect to such Company Intellectual Property with the same legal force and effect as if executed or undertaken by Executive.

11.4 No infringement. Executive represents and warrants to the Company that all Intellectual Property Executive delivers to the Company shall be original and shall not infringe upon or violate any patent, copyright or proprietary right of any person or third party.

11.5 License to Prior Invention. If Executive in the course of Executive's employment for the Company incorporates into a Company product Intellectual Property that Executive has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Executive's employment with the Company in which Executive has a property right (each, a "Prior Invention"), Executive hereby grants to the Company a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use and sell such Prior Invention. Executive hereby represents and warrants that all Prior Inventions have been listed by Executive on Exhibit B hereto or, if no such list is attached, that there are no Prior Inventions. Executive will not incorporate any Intellectual Property owned by any third party into any Company Intellectual Property without the Company's prior written permission.

11.6 Severability. To the extent this Agreement is required to be construed in accordance with laws of any state which precludes as a requirement in an employee agreement the assignment of certain classes of inventions made by an employee, this Section 11 will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes.

12. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

13. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 13. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

14. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photographs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Executive acknowledges and agrees that Executive has no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages and voice messages) and that Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

15. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 10 through 13 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 10 through 13, restraining Executive from engaging in activities prohibited by Sections 10 through 13 and such other relief as may be required specifically to enforce any of the provisions in Sections 10 through 13. Executive further agrees that, if Executive breaches any of the provisions in Sections 10 through 13 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 10 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

16. Representations Regarding Prior Work and Legal Obligations.

16.1 Executive represents and warrants that Executive has no agreement or other legal obligation with any prior employer, or any other person or entity, that restricts Executive's ability to accept employment with the Company. Executive further represents and warrants that Executive is not a party to any agreement (including, without limitation, a non-competition, non-solicitation, no hire or similar agreement) and has no other legal obligation that restricts in any way Executive's ability to perform Executive's duties and satisfy Executive's other obligations to the Company, including, without limitation, those under this Agreement.

16.2 Executive represents and acknowledges that Executive has been instructed by the Company that at no time should Executive divulge to or use for the benefit of the Company or any Company Affiliates any trade secret or confidential or proprietary information of any previous employer or entity with which Executive was affiliated or of any other third-party. Executive expressly represents and warrants that Executive has not divulged or used any such information for the benefit of the Company or Company Affiliates and will not do so.

16.3 Executive represents and agrees that the Executive has not and will not misappropriate any intellectual property belonging to any other person or entity.

16.4 Executive acknowledges that the Company is basing important business decisions on these representations, agreements and warranties, and Executive affirms that all of the statements included herein are true. Executive agrees that Executive shall defend, indemnify and hold the Company harmless from any liability, expense (including attorneys' fees) or claim by any person in any way arising out of, relating to, or in connection with a breach and/or the falsity of any of the representations, agreements and warranties made by Executive in this Section 16.

17. Indemnification and Liability Insurance. The Company shall indemnify Executive to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys' fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses), and Executive will be entitled to the protection of any insurance policies that the Company may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or sustained by Executive in connection with any action, suit or proceeding brought by a third-party to which Executive may be made a party by reason of Executive's being or having been a director, officer or employee of the Company or any of its affiliates, or Executive's serving or having served any other enterprise as a director, officer or employee at the request of the Company (other than any dispute, claim or controversy arising under or relating to this Agreement), provided that he acted within the scope of his duties as a director, officer or employee of the Company. The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof; provided, however, that the Company may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the Company determines in good faith that such insurance is not available or is available only at unreasonable expense.

18. Miscellaneous Provisions.

18.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

18.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15th day of the third month (*i.e.*, 2½ months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to the Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A, and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

18.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

18.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

18.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

18.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to New York County, New York and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

18.7 Mutual Waiver of Jury Trial. Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

18.8 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to [_____], or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

18.9 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment hereunder, including without limitation Sections 10-15 and 18 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

18.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

18.11 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

18.12 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 10 above, and (iii) Executive is executing this Agreement voluntarily, knowingly and willingly and without duress.

18.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

18.14 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

18.15 Counterparts. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies, electronically scanned copies and other facsimiles of this Agreement (including such signed counterparts) may be used in lieu of the originals for any purpose.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

RICHARD STAMM

AGRIFY CORPORATION

By: _____
Name:
Title:

[Signature page to Employment Agreement.]

EXHIBIT A

EXHIBIT B

LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description

TGS-CCI PROFITS INTEREST AGREEMENT

THIS TGS-CCI PROFITS INTEREST AGREEMENT (this "Agreement") is made and entered into as of this 21st day of January, 2020, by and between CCI Finance, LLC, a Nevada limited liability company (the "Company"), and AGRIFY CORPORATION (the "Investor").

WHEREAS, the Investor funded the leasing operations of the Company in the amount of One Million One Hundred and Forty Thousand Dollars ($1,140,000.00) (the "Funding Amount") of a total funding amount Four Million Dollars ($4,000,000.00) equaling a proportionate funding ratio of Twenty Eight and Five Tenths percent (28.5000%) (the "Proportionate Funding Ratio"); and

WHEREAS, the Company and the Investor have agreed to a profits interest in exchange for said funding; and

WHEREAS, the parties hereto desire to enter into this Agreement to define and set forth the terms and conditions of the profits interest to be issued to the Investor by the Company; and

WHEREAS, the Company desires to issue such profits interest to the Investor, and the Investor desires to accept such profits interest, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investor agree as follows:

ARTICLE I
GRANT OF PROFITS INTEREST

1.1. Grant of Profits Interest. In consideration of the capital funding of the Company by the Investor, and for other good and valuable consideration, the Company awards a profits interest (the "Profits Interest"), payable annually or more frequently as may be determined by the Company, in an amount equal to the Proportionate Funding Ratio of the result of (i) all proceeds received by the Company pursuant to that certain Lease Agreement attached hereto as Exhibit A, *less* (ii) the payments made pursuant to that certain CT Equipment Services Profits Interest Agreement attached hereto as Exhibit B (such amount hereinafter referred to as the "Company Gross Profit"). Such Grant shall begin immediately on the execution hereof and shall continue until Investor receives payments equal to an Eighteen percent (18%) Internal Rate of Return on the Funding Amount (the "Preferred Return"). Immediately subsequent to that date upon which Investor attains the Preferred Return prior to the five (5) year anniversary date hereof (the "Term"), the Profits Interest shall be reduced to Twenty percent (20%) of the gross revenue of the Company. If lnvestor shall not have attained the Preferred return prior to the end of the Term, then the Profits Interest shall terminate immediately subsequent to the Investor attaining the Preferred Return on any date after the Term.

1.2. Acceptance. Pursuant to this Agreement, the Profits Interest is hereby awarded to the Investor, and the Investor hereby accepts such award, subject, in all respects, to the terms, restrictions and rights set fo1th in this Agreement. The Investor acknowledges and agrees that this grant of Profits Interest shall be subject to all of the terms and provisions of this Agreement.

ARTICLE II
SETTLEMENT

2.1. Withholding of Taxes and Other Required Source Deductions. To the extent required by applicable International, Federal, state, or local tax purposes, the Company shall deduct from the amount of the required cash payment the amount that is required to satisfy the any tax withholding obligation and other required source deductions arising in connection with the Profits Interest.

2.2. Corporate Acts. The existence of the Profits Interest shall not affect in any way the right or power of the members of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger, amalgamation, consolidation or other reorganization or business combination of the Company, any issue of debt or equity securities, the dissolution or liquidation of the Company or any sale, lease, exchange or other disposition of all or any part of its assets or business or any other corporate act or proceeding; provided, however, that any such action shall not dilute or restrict the Profits Interest in any way.

2.3. No Rights as Member. The issuance of the Profits Interest as set forth in Section 1.1 above is solely a right of the Investor to receive an unsecured and unfunded contingent payment which right is subject to the terms, conditions and restrictions set forth in this Agreement. Such grant of Profits Interest does not confer upon the Investor any rights of ownership in the Company other than as detailed in this Agreement.

2.4. Management Relationship. Nothing in the award of the Profits Interest pursuant to this Agreement shall confer upon the Investor the right of management of the Company.

2.5. **Defaulted Lease Disposition.** Notwithstanding anything in this agreement to the contrary, in the event that, during the Term, the Lessee of the Lease Agreement is in material default of the Lease Agreement, and such default remains uncured, then (i) Company shall not take any action adverse to the Lessee, and (ii) Company shall immediately assign all of its right, title, and interest in and to the Lease Agreement to Investor. Upon such assignment, Investor shall not be entitled to any additional compensation under this Agreement accruing after the date of such assignment. Time is of the essence in performance of the obligations under this Section 2.5.

ARTICLE III
MISCELLANEOUS PROVISIONS

3.1. Assignment and Assumption. No right, benefit or interest hereunder shall be subject to assignment, encumbrance, charge, pledge, hypothecation or set-off by the Investor in respect of any claim, debt, obligation or similar process, except by will or by the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Investor's personal legal representatives. This Agreement shall be binding upon and shall inure to the benefit of the Company, its successors and assigns. The Company will require any successor or assign (whether direct or indirect, by purchase, merger, consolidation, operation of law or otherwise) to all or substantially all of the business or assets of the Company to assume expressly and to agree to perform under this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession or assignment had taken place.

3.2. Notices. Any notices or other communications provided for in this Agreement shall be sufficient if in writing. In the case of the Investor, such notices or communications shall be effectively delivered if hand delivered to the Investor or if sent by registered or ce1iified mail to the Investor at the last address the Investor has filed with the Company. In the case of the Company, such notices or communications shall be effectively delivered if sent by registered or ce1iified mail to the Company at its principal Investor offices.

3.3. Representations by the Company. The Company represents that (i) the execution of this Agreement and the provisions herein have been duly authorized by the Company, (ii) the execution, delivery and performance of this Agreement does not violate any law, regulation, order, decree, agreement, plan or corporate governance document of or applicable to the Company, and (iii) upon the execution and delivery of this Agreement, it shall be the valid and binding obligation of the Company enforceable in accordance with its terms.

3.4. Amendment. No prov1s10n of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties hereto. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

3.5. Severability. If any term or provision hereof is determined to be invalid or unenforceable in a final comt or arbitration proceeding, (i) the remaining terns and provisions hereof shall be unimpaired and (ii) the invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable tenn or **provision.**

3.6. Governing Law and Arbitration. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada, without giving effect to that body of law relating to choice of laws. In the event that the Investor and the Investor are unable to resolve, within thirty (30) days after the initiation of good faith negotiations, any controversy, dispute or claim between the parties relating to this Agreement, such controversy, dispute, or claim shall be resolved by binding arbitration in Delaware, in accordance with the American Arbitration Association's Commercial Arbitration Rules then in effect. Company shall take no action adverse to the Lessee of the Lease Agreement during the pendency of any such dispute or arbitration, without Investor's prior written approval. The arbitrator's award resulting from such arbitration may be continued and entered as a final judgment in any comt of competent jurisdiction and enforced accordingly. Each party shall be solely responsible for its separate costs and expenses of the arbitration, including attorneys' fees and costs. The American Arbitration Association's fees and any fees for the m·bitrator's services shall be divided equally among the parties in interest.

3.7. Binding Effect. This Agreement is binding upon and inures to the benefit of the Company, its successors and assigns, and the Investor, his next of kin, legatees, administrators, executors, legal representatives and all persons lawfully claiming under him.

3.8. Entire Agreement. This Agreement contains the entire agreement of the Investor, the Company and any predecessors or affiliates thereof with respect to the subject matter hereof and all prior agreements, term sheets, understandings and arrangements, oral or written, between the pmties hereto with respect to the subject matter hereof are superseded hereby.

3.9. Counterparts. This Agreement may be executed in any nmnber of counterpmts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delive1y of an executed counterpart of the signature page of this Agreement by facsimile transmission shall be equally as effective as delivery of a manually executed counterpmt of this Agreement. For purposes of this Agreement, an electronic signature shall be deemed an original signature.

3.10. Titles and Section Headings. The titles and section headings in this Agreement are for convenience of reference only, and in the event of any conflict, the text of the Agreement, rather than such titles or headings, shall control.

3.11. Confidentiality. The Investor agrees and acknowledges that the terms as well as the existence of this Agreement shall remain confidential and shall not be disclosed to anyone other than the Investor's attorney, accountant and spouse, who shall all be advised of the confidentiality requirement. Any breach of this confidentiality provision may result in the forfeiture of any Profits Interest that the Investor may be entitled to under this Agreement.

BY THE INVESTOR'S SIGNATURE AND THE SIGNATURE OF THE COMPANY'S REPRESENTATIVE BELOW, THE INVESTOR AND THE COMPANY AGREE THAT THE PROFITS INTEREST IS GRANTED UNDER AND GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE INVESTOR HAS RECEIVED AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, HAS HAD AN OPPORTUNITY TO OBTAIN THE ADVICE OF COUNSEL PRIOR TO EXECUTING THIS AGREEMENT, HAS NOT RELIED UPON ANY OTHER ORAL OR WRITI'EN INFORMATION SUPPLIED BY THE COMPANY AND FULLY UNDERSTANDS ALL PROVISIONS OF THE AGREEMENT AND THE PROFITS INTEREST GRANTED HEREUNDER.

IN WITNESS WHEREOF, the Company and the Investor have each caused this Agreement to be duly executed by its respective duly authorized representative, all as of the date first above written.

THE INVESTOR

AGRIFY CORPORATION

By: _____

'Investor"

THE COMPANY

CCI Finance, LLC, a Nevada limited liability company

By: _____

Christopher T. Graham, Manager

Exhibit 10.12

EXECUTION VERSION

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made as of January 10, 2020 by and among Agrify Corporation, a Nevada corporation (including any successor in interest of the Company or other entity that issues Registrable Securities (as defined herein), the "Company"), and the other persons who shall have delivered a signature page hereto (each an "Investor," and collectively, the "Investors").

RECITALS

WHEREAS, pursuant to Investor Subscription Agreements (the "Subscription Agreements") dated the date hereof, the Company sold to the Investors shares of Series A Convertible Preferred Stock (the "Series A Preferred Stock"), convertible into shares of the Company's common stock, par value $0.001 per share (the "Common Stock").

WHEREAS, the Company and the Investors desire to enter into this Agreement in order to, among other things, reflect the registration rights to be provided to the Investors in connection with their purchase of the Series A Stock.

NOW, THEREFORE, in consideration of the mutual promises and covenants and agreements set forth herein, the Company and the Investors hereby agree as follows:

AGREEMENT

1. **Registration Rights**.

1.1 Definitions. For purposes of this Section 1:

(a) Holder. For purposes of this Section 1 and Section 2 hereof, the term "Holder" or "Holders" means any person or persons owning of record Registrable Securities and any affiliate or any permitted transferee or assignee of record of such Registrable Securities; provided, however, that for purposes of this Agreement, a record holder of any securities convertible or exercisable into such Registrable Securities shall be deemed to be the Holder of such Registrable Securities.

(b) Registration. The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement.

(c) Registrable Securities. The term "Registrable Securities" means: (i) any and all shares of Common Stock issued or issuable upon conversion of the Series A Preferred Stock (the "Securities"), and (iii) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, in exchange for or in replacement of, the Securities, provided that any of the foregoing securities shall cease to be Registrable Securities upon the earliest to occur of the following: (A) a sale pursuant to an effective Registration Statement (B) a sale pursuant to Rule 144 promulgated under the Securities Act ("Rule 144") or any similar rule then in force under the Securities Act; (C) eligibility for sale pursuant to Rule 144 without current public information requirements and volume or manner of sale restrictions; or (D) when such securities shall cease to be outstanding.

(d) Registration Statement. The term "Registration Statement" shall mean any registration statement of the Company filed under the Securities Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

(e) Securities Act. The term "Securities Act" means the Securities Act of 1933, as amended.

(f) SEC. The term "SEC" means the United States Securities and Exchange Commission.

1.2 Piggyback Registrations. The Company shall notify all Holders of Registrable Securities in writing at least fifteen (15) calendar days prior to filing any registration statement under the Securities Act for purposes of effecting an offering of securities of the Company (including, but not limited to, registration statements relating to secondary offerings of securities of the Company, but excluding registration statements relating to (i) an underwritten public offering of the Common Stock as a result of which the Common Stock will be listed on NASDAQ, NYSE, NYSE American or similar nationally-recognized stock exchange, (ii) any employee benefit plan or (iii) a corporate reorganization, merger or acquisition) and will afford each such Holder an opportunity to include in such registration statement all or any part of the Registrable Securities then held by such Holder. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by such Holder shall, within ten (10) calendar days after receipt of the above-described notice from the Company, so notify the Company in writing, and in such notice shall inform the Company of the number of Registrable Securities such Holder wishes to include in such registration statement. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(a) Underwriting. If a registration statement under which the Company gives notice under this Section 1.2 is for an underwritten offering, then the Company shall so advise the Holders of Registrable Securities. In such event, the right of any such Holder's Registrable Securities to be included in a registration pursuant to this Section 1.2 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the managing underwriter or underwriter(s) selected by the Company for such underwriting. Notwithstanding any other provision of this Agreement, if the managing underwriter(s) determine(s) in good faith that marketing factors require a limitation of the number of shares to be underwritten, then the managing underwriter(s) may exclude shares (including Registrable Securities) from the registration and the underwriting, and the number of shares that may be included in the registration and the underwriting shall be allocated, first, to any person that exercised demand registration rights in connection with such registration, second, the Company, and third, to all holders of Company securities having piggyback registration rights (including Holders of Registrable Securities) requesting inclusion of their securities in such registration statement on a pro rata basis based on the total number of securities for which registration was requested. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten (10) business days prior to the effective date of the registration statement. Any Registrable Securities excluded or withdrawn from such underwritten offering shall be removed from the applicable Registration Statement.

(b) Company Termination of Registration. The Company reserves the right to terminate any registration under this Section 1.2 at any time and for any reason without liability to any Holder.

(c) Registration Expenses**.** All expenses relating to the Company's compliance with this Section 1.2, including, without limitation, all registration, filing and listing application fees, costs of distributing any prospectuses and supplements thereto, printing expenses, fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including counsel fees) incurred in connection with complying with state securities or "blue sky" laws, fees of FINRA, transfer taxes, and fees of transfer agents and registrars (collectively, the "Registration Expenses") shall be borne by the Company. The obligation of the Company to bear the Registration Expenses shall apply irrespective of whether a registration becomes effective, is withdrawn or suspended, is converted to another form of registration and irrespective of when any of the foregoing shall occur.

(d) Selling Expenses. All underwriting discounts and selling commissions applicable to the sale of Registrable Securities, and any fees and disbursements of any counsel to the Holders (collectively, the "Selling Expenses") shall be borne by the Holders in proportion to the aggregate selling price of the Registrable Securities of each Holder to be so registered, including, without limitation, the following: underwriting fees, discounts and expenses, if any, applicable to any Holder's Registrable Securities; fees and disbursements of counsel or other professionals that any Holder may choose to retain in connection with a Registration Statement filed pursuant to this Agreement; and any other expenses incurred by or on behalf of such Designated Holder in connection with the offer and sale of such Designated Holder's Registrable Securities other than expenses that the Company is expressly obligated to pay pursuant to this Agreement.

1.3 Obligations of the Company. Whenever required to effect the registration of any Registrable Securities under this Agreement, the Company shall, as expeditiously as reasonably possible:

(a) subject to the termination rights set forth in Section 1.2(b) above, prepare and file with the SEC a Registration Statement with respect to such Registrable Securities, respond as promptly as possible to any comments received from the SEC, and use its commercially reasonable efforts to cause such Registration Statement to become effective, and the Holders shall have the opportunity to object to any information pertaining to itself that is contained therein and the Company will make the corrections reasonably requested by the Holders with respect to such information prior to filing any Registration Statement or amendment thereto or any prospectus or any supplement thereto;

(b) subject to the termination rights set forth in Section 1.2(b) above, prepare and file with the SEC such amendments and supplements to such Registration Statements and any prospectus used in connection therewith as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such Registration Statement and to keep such Registration Statement effective until the expiration of the effective period applicable to such Registration Statement;

(c) provide copies to and permit counsel designated by the Holders to review each Registration Statement and all amendments and supplements thereto no fewer than five
(5) calendar days prior to their filing with the SEC;

(d) furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of the Registrable Securities owned by them that are included in such registration;

(e) use its best efforts to register and qualify the Registrable Securities covered by such Registration Statement under such other securities laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such jurisdictions;

(f) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering (it being understood and agreed that, as a condition to the Company's obligations under this clause (f), each Holder participating in such underwriting public offering shall also enter into and perform its obligations under such an agreement);

(g) as soon as reasonably practicable (but within at least one business day) notify each Holder of Registrable Securities covered by such Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and the Company shall as soon as reasonably practicable prepare and file with the SEC an amendment or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(h) use commercially reasonable efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

(i) make available for inspection, during normal business hours and on reasonable notice, by the Holders and any attorney, accountant or other agent retained by any of the Holders, all reasonably requested publicly available, non-confidential financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply, on reasonable notice, all publicly available, non- confidential information reasonably requested by the attorney, accountant or agent of any Holder; and

(j) continuously maintain a transfer agent and registrar for all Registrable Securities.

1.4 Information. The Company may require each selling Holder to furnish to the Company information regarding such Holder and the distribution of such Registrable Securities as is required by law or the SEC to be disclosed in such Registration Statement, prospectus, or any amendment or supplement thereto, and the Company may exclude from such registration the Registrable Securities of any such Holder who unreasonably fails to furnish such information within a reasonable time after receiving such request.

1.5 Indemnification. In the event any Registrable Securities are included in a registration statement under Section 1.2 hereof:

(a) By the Company. The Company will indemnify and hold harmless each Holder and its partners, officers and directors, employees and agents, successors and assigns and each other person, if any, who controls such Holder within the meaning of the Securities Act, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"):

(i) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto;

(ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or

(iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any federal or state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any federal or state securities law in connection with the offering covered by such registration statement;

and the Company will reimburse each such Holder, partner, officer or director, underwriter or controlling person for any legal or other expenses reasonably incurred by them in connection with defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this subsection 1.5(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, underwriter or controlling person of such Holder specifically for inclusion in such Registration Statement or prospectus or amendment or supplement thereto.

(b) By Selling Holders. Each selling Holder, severally but not jointly, will indemnify and hold harmless the Company, each of its directors, each of its officers who have signed the registration statement, any underwriter (as defined in the Securities Act) for the Company, and each person, if any, who controls the Company or such underwriter within the meaning of the Securities Act, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, controlling person, or underwriter may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder specifically for inclusion in such Registration Statement or prospectus or amendment or supplement thereto; and each such Holder will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer, controlling person, or underwriter in connection with defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this subsection 1.5(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further, that the total amounts payable in indemnity by a Holder under this subsection 1.5(b) in respect of any Violation shall not exceed the net proceeds received by such Holder upon the sale of the Registrable Securities included in the Registration Statement of which such Violation arises.

(c) Notice. Promptly after receipt by an indemnified party under this Section 1.55 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.55, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential conflict of interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.55.

(d) Contribution. If the indemnification provided for in this Section 1.55 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, (i) that in no event shall any contribution by a Holder hereunder exceed the net proceeds received by such Holder upon the sale of the Registrable Securities included in the Registration Statement of which such Violation arises, and (ii) no person or entity guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

(e) Survival. The obligations of the Company and Holders under this Section 1.55 shall survive the completion of any offering of Registrable Securities in a registration statement, and otherwise.

1.6 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Registrable Securities to the public without registration, the Company agrees to use commercially reasonable efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public; and

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements).

2. **General Provisions**.

2.1 Notices. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, deposited in the international air mail postage prepaid, or sent by facsimile or e-mail when receipt is electronically confirmed

(i) if to an Investor, as set forth below Investor's name on the signature page of this Agreement; and

(ii) if to the Company, to the address set forth below:

Agrify Corporation
1600 District Avenue, Unit 106
Burlington, MA 01803
Attention: [ ]
Telephone: [ ]

Facsimile:

With a copy to:

Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154
Attn: Mitchell S. Nussbaum
Telephone No.: 212-407-4159
Facsimile No.: 212-407-4990

Any party hereto (and such party's permitted assigns) may by notice so given change its address for future notices hereunder. Notice shall be deemed conclusively given when personally delivered or sent in the manner set forth above.

2.2 Amendments and Waivers. This Agreement may be amended only by a writing signed by the Company and the Investors holding a majority of the Registrable Securities. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Investors holding a majority of the Registrable Securities.

2.3 Entire Agreement. This Agreement, together with all the exhibits hereto, constitutes and contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties respecting the subject matter hereof.

2.4 Governing Law. This Agreement shall be governed by and construed exclusively in accordance with the internal laws of the State of New York, excluding that body of law relating to conflict of laws and choice of law that would result in the application of the substantive law of another jurisdiction.

2.5 JURISDICTION; SERVICE; WAIVERS. ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT IN A COURT OF RECORD OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK. THE PARTIES TO THIS AGREEMENT HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS OF THE STATE OF NEW YORK, AND SERVICE OF PROCESS MAY BE MADE UPON THE PARTIES TO THIS AGREEMENT BY MAILING A COPY OF THE SUMMONS AND ANY COMPLAINT TO SUCH PERSON, BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT ITS ADDRESS TO BE USED FOR THE GIVING OF NOTICES UNDER THIS AGREEMENT. BY ACCEPTANCE HEREOF, THE PARTIES HERETO EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OR MAINTAINING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTION.

2.6 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

2.7 Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

2.8 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the parties hereto.

2.9 Captions. The captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe or interpret this Agreement.

2.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

2.11 Costs and Attorneys' Fees. In the event that any action, suit or other proceeding is instituted concerning or arising out of this Agreement or any transaction contemplated hereunder, the prevailing party shall recover all of such party's costs and reasonable attorneys' fees incurred in each such action, suit or other proceeding, including any and all appeals or petitions therefrom.

2.12 Adjustments for Stock Splits and Certain Other Changes. Wherever in this Agreement there is a reference to a specific number of shares of Common Stock of the Company, then, upon the occurrence of any subdivision, combination or stock dividend of such class or series of stock, the specific number of shares so referenced in this Agreement shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such class or series of stock by such subdivision, combination or stock dividend.

2.13 Aggregation of Stock. All shares deemed to be "beneficially owned" (as such term is defined under Rule 13d-3 of the Exchange Act) by any entity or person, shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement as of the date and year first above written.

AGRIFY CORPORATION

By: _____
Name: Raymond Chang
Title: CEO

[name]	[Name of Co-Investor, if applicable]
[Signature]	[Signature]
Name:	Name:
Title:	Title:
Mailing Address:	Telephone No.:
	Facsimile No:
	Email Address:
	Taxpayer ID Number:
Attention:	

Counterpart Signature Page to Registration Rights Agreement

AGRIFY CORPORATION

2020 OMNIBUS EQUITY INCENTIVE PLAN

AGRIFY CORPORATION

2020 OMNIBUS EQUITY INCENTIVE PLAN

ARTICLE I
PURPOSE

The purpose of this Agrify Corporation 2020 Omnibus Equity Incentive Plan (the "Plan") is to benefit Agrify Corporation, a Nevada corporation (the "Company") and its stockholders, by assisting the Company and its subsidiaries to attract, retain and provide incentives to key management employees, directors, and consultants of the Company and its Affiliates, and to align the interests of such service providers with those of the Company's stockholders. Accordingly, the Plan provides for the granting of Non-qualified Stock Options, Incentive Stock Options, Restricted Stock Awards, Restricted Stock Unit Awards, Stock Appreciation Rights, Performance Stock Awards, Performance Unit Awards, Unrestricted Stock Awards, Distribution Equivalent Rights or any combination of the foregoing.

ARTICLE II
DEFINITIONS

The following definitions shall be applicable throughout the Plan unless the context otherwise requires:

2.1 "Affiliate" shall mean any corporation which, with respect to the Company, is a "subsidiary corporation" within the meaning of Section 424(f) of the Code or other entity in which the Company has a controlling interest in such entity or another entity which is part of a chain of entities in which the Company or each entity has a controlling interest in another entity in the unbroken chain of entities ending with the applicable entity.

2.2 "Award" shall mean, individually or collectively, any Option, Restricted Stock Award, Restricted Stock Unit Award, Performance Stock Award, Performance Unit Award, Stock Appreciation Right, Distribution Equivalent Right or Unrestricted Stock Award.

2.3 "Award Agreement" shall mean a written agreement between the Company and the Holder with respect to an Award, setting forth the terms and conditions of the Award, as amended.

2.4 "Board" shall mean the Board of Directors of the Company.

2.5 "Base Value" shall have the meaning given to such term in Section 14.2.

2.6 "Cause" shall mean (i) if the Holder is a party to an employment or service agreement with the Company or an Affiliate which agreement defines "Cause" (or a similar term), "Cause" shall have the same meaning as provided for in such agreement, or (ii) for a Holder who is not a party to such an agreement, "Cause" shall mean termination by the Company or an Affiliate of the employment (or other service relationship) of the Holder by reason of the Holder's (A) intentional failure to perform reasonably assigned duties, (B) dishonesty or willful misconduct in the performance of the Holder's duties, (C) involvement in a transaction which is materially adverse to the Company or an Affiliate, (D) breach of fiduciary duty involving personal profit, (E) willful violation of any law, rule, regulation or court order (other than misdemeanor traffic violations and misdemeanors not involving misuse or misappropriation of money or property), (F) commission of an act of fraud or intentional misappropriation or conversion of any asset or opportunity of the Company or an Affiliate, or (G) material breach of any provision of the Plan or the Holder's Award Agreement or any other written agreement between the Holder and the Company or an Affiliate, in each case as determined in good faith by the Board, the determination of which shall be final, conclusive and binding on all parties.

2.7 "Change of Control" shall mean: (i) for a Holder who is a party to an employment or consulting agreement with the Company or an Affiliate which agreement defines "Change of Control" (or a similar term), "Change of Control" shall have the same meaning as provided for in such agreement, or (ii) for a Holder who is not a party to such an agreement, "Change of Control" shall mean the satisfaction of any one or more of the following conditions (and the "Change of Control" shall be deemed to have occurred as of the first day that any one or more of the following conditions shall have been satisfied):

(a) Any person (as such term is used in paragraphs 13(d) and 14(d)(2) of the Exchange Act, hereinafter in this definition, "Person"), other than the Company or an Affiliate or an employee benefit plan of the Company or an Affiliate, becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities;

(b) The closing of a merger, consolidation or other business combination (a "Business Combination") other than a Business Combination in which holders of the Shares immediately prior to the Business Combination have substantially the same proportionate ownership of the common stock or ordinary shares, as applicable, of the surviving corporation immediately after the Business Combination as immediately before;

(c) The closing of an agreement for the sale or disposition of all or substantially all of the Company's assets to any entity that is not an Affiliate;

(d) The approval by the holders of shares of Shares of a plan of complete liquidation of the Company, other than a merger of the Company into any subsidiary or a liquidation as a result of which persons who were stockholders of the Company immediately prior to such liquidation have substantially the same proportionate ownership of shares of common stock or ordinary shares, as applicable, of the surviving corporation immediately after such liquidation as immediately before; or

(e) Within any twenty-four (24) month period, the Incumbent Directors shall cease to constitute at least a majority of the Board or the board of directors of any successor to the Company; provided, however, that any director elected to the Board, or nominated for election, by a majority of the Incumbent Directors then still in office, shall be deemed to be an Incumbent Director for purposes of this paragraph (e), but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of an individual, entity or "group" other than the Board (including, but not limited to, any such assumption that results from paragraphs (a), (b), (c), or (d) of this definition).

2.8 "Code" shall mean the United States of America Internal Revenue Code of 1986, as amended. Reference in the Plan to any section of the Code shall be deemed to include any amendments or successor provisions to any section and any regulation under such section.

2.9 "Committee" shall mean a committee comprised of two (2) or more members of the Board who are selected by the Board as provided in Section 4.1.

2.10 "Company" shall have the meaning given to such term in the introductory paragraph, including any successor thereto.

2.11 "Consultant" shall mean any non-Employee (individual or entity) advisor to the Company or an Affiliate who or which has contracted directly with the Company or an Affiliate to render bona fide consulting or advisory services thereto.

2.12 "Director" shall mean a member of the Board or a member of the board of directors of an Affiliate, in either case, who is not an Employee.

2.13 "Distribution Equivalent Right" shall mean an Award granted under Article XIII of the Plan which entitles the Holder to receive bookkeeping credits, cash payments and/or Share distributions equal in amount to the distributions that would have been made to the Holder had the Holder held a specified number of Shares during the period the Holder held the Distribution Equivalent Right.

2.14 "Distribution Equivalent Right Award Agreement" shall mean a written agreement between the Company and a Holder with respect to a Distribution Equivalent Right Award.

2.15 "Effective Date" shall mean [_____], 2020.[1]

2.16 "Employee" shall mean any employee, including any officer, of the Company or an Affiliate.

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1 Date of IPO

2.17 "Exchange Act" shall mean the United States of America Securities Exchange Act of 1934, as amended.

2.18 "Fair Market Value" shall mean, as of any specified date, the closing sales price of the Shares for such date (or, in the event that the Shares are not traded on such date, on the immediately preceding trading date) on the NASDAQ Stock Market ("NASDAQ"), as reported by NASDAQ, or such other domestic or foreign national securities exchange on which the Shares may be listed. If the Shares are not listed on NASDAQ or on a national securities exchange, but are quoted on the OTC Bulletin Board or by the National Quotation Bureau, the Fair Market Value of the Shares shall be the mean of the highest bid and lowest asked prices per Share for such date. If the Shares are not quoted or listed as set forth above, Fair Market Value shall be determined by the Board in good faith by any fair and reasonable means (which means may be set forth with greater specificity in the applicable Award Agreement). The Fair Market Value of property other than Shares shall be determined by the Board in good faith by any fair and reasonable means consistent with the requirements of applicable law.

2.19 "Family Member" of an individual shall mean any child, stepchild, grandchild, parent, stepparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the Holder's household (other than a tenant or employee of the Holder), a trust in which such persons have more than fifty percent (50%) of the beneficial interest, a foundation in which such persons (or the Holder) control the management of assets, and any other entity in which such persons (or the Holder) own more than fifty percent (50%) of the voting interests.

2.20 "Holder" shall mean an Employee, Director or Consultant who has been granted an Award or any such individual's beneficiary, estate or representative, who has acquired such Award in accordance with the terms of the Plan, as applicable.

2.21 "Incentive Stock Option" shall mean an Option which is intended by the Committee to constitute an "incentive stock option" and conforms to the applicable provisions of Section 422 of the Code.

2.22 "Incumbent Director" shall mean, with respect to any period of time specified under the Plan for purposes of determining whether or not a Change of Control has occurred, the individuals who were members of the Board at the beginning of such period.

2.23 "Non-qualified Stock Option" shall mean an Option which is not an Incentive Stock Option or which is designated as an Incentive Stock Option but does not meet the applicable requirements of Section 422 of the Code.

2.24 "Option" shall mean an Award granted under Article VII of the Plan of an option to purchase Shares and shall include both Incentive Stock Options and Non-qualified Stock Options.

2.25 "Option Agreement" shall mean a written agreement between the Company and a Holder with respect to an Option.

2.26 "Performance Criteria" shall mean the criteria selected by the Committee for purposes of establishing the Performance Goal(s) for a Holder for a Performance Period.

2.27 "Performance Goals" shall mean, for a Performance Period, the written goal or goals established by the Committee for the Performance Period based upon the Performance Criteria, which may be related to the performance of the Holder, the Company or an Affiliate.

2.28 "Performance Period" shall mean one or more periods of time, which may be of varying and overlapping durations, selected by the Committee, over which the attainment of the Performance Goals shall be measured for purposes of determining a Holder's right to, and the payment of, a Performance Stock Award or a Performance Unit Award.

2.29 "Performance Stock Award" or "Performance Stock" shall mean an Award granted under Article XII of the Plan under which, upon the satisfaction of predetermined Performance Goals, Shares are paid to the Holder.

2.30 "Performance Stock Agreement" shall mean a written agreement between the Company and a Holder with respect to a Performance Stock Award.

2.31 "Performance Unit" shall mean a Unit awarded to a Holder pursuant to a Performance Unit Award.

2.32 "Performance Unit Award" shall mean an Award granted under Article XI of the Plan under which, upon the satisfaction of predetermined Performance Goals, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

2.33 "Performance Unit Agreement" shall mean a written agreement between the Company and a Holder with respect to a Performance Unit Award.

2.34 "Plan" shall mean this Agrify Corporation 2020 Omnibus Equity Incentive Plan, as amended from time to time, together with each of the Award Agreements utilized hereunder.

2.35 "Restricted Stock Award" and "Restricted Stock" shall mean an Award granted under Article VIII of the Plan of Shares, the transferability of which by the Holder is subject to Restrictions.

2.36 "Restricted Stock Agreement" shall mean a written agreement between the Company and a Holder with respect to a Restricted Stock Award.

2.37 "Restricted Stock Unit Award" and "RSUs" shall refer to an Award granted under Article X of the Plan under which, upon the satisfaction of predetermined individual service-related vesting requirements, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder.

2.38 "Restricted Stock Unit Agreement" shall mean a written agreement between the Company and a Holder with respect to a Restricted Stock Award.

2.39 "Restriction Period" shall mean the period of time for which Shares subject to a Restricted Stock Award shall be subject to Restrictions, as set forth in the applicable Restricted Stock Agreement.

2.40 "Restrictions" shall mean the forfeiture, transfer and/or other restrictions applicable to Shares awarded to an Employee, Director or Consultant under the Plan pursuant to a Restricted Stock Award and set forth in a Restricted Stock Agreement.

2.41 "Rule 16b-3" shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act, as such may be amended from time to time, and any successor rule, regulation or statute fulfilling the same or a substantially similar function.

2.42 "Shares" or "Stock" shall mean the common stock of the Company, par value $0.001 per share.

2.43 "Stock Appreciation Right" or "SAR" shall mean an Award granted under Article XIV of the Plan of a right, granted alone or in connection with a related Option, to receive a payment equal to the increase in value of a specified number of Shares between the date of Award and the date of exercise.

2.44 "Stock Appreciation Right Agreement" shall mean a written agreement between the Company and a Holder with respect to a Stock Appreciation Right.

2.45 "Tandem Stock Appreciation Right" shall mean a Stock Appreciation Right granted in connection with a related Option, the exercise of some or all of which results in termination of the entitlement to purchase some or all of the Shares under the related Option, all as set forth in Article XIV.

2.46 "Ten Percent Stockholder" shall mean an Employee who, at the time an Option is granted to him or her, owns shares possessing more than ten percent (10%) of the total combined voting power of all classes of shares of the Company or of any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code), within the meaning of Section 422(b)(6) of the Code.

2.47 "Termination of Service" shall mean a termination of a Holder's employment with, or status as a Director or Consultant of, the Company or an Affiliate, as applicable, for any reason, including, without limitation, Total and Permanent Disability or death, except as provided in Section 6.4. In the event Termination of Service shall constitute a payment event with respect to any Award subject to Code Section 409A, Termination of Service shall only be deemed to occur upon a "separation from service" as such term is defined under Code Section 409A and applicable authorities.

2.48 "Total and Permanent Disability" of an individual shall mean the inability of such individual to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, within the meaning of Section 22(e)(3) of the Code.

2.49 "Unit" shall mean a bookkeeping unit, which represents such monetary amount as shall be designated by the Committee in each Performance Unit Agreement, or represents one Share for purposes of each Restricted Stock Unit Award.

2.50 "Unrestricted Stock Award" shall mean an Award granted under Article IX of the Plan of Shares which are not subject to Restrictions.

2.51 "Unrestricted Stock Agreement" shall mean a written agreement between the Company and a Holder with respect to an Unrestricted Stock Award.

ARTICLE III
EFFECTIVE DATE OF PLAN

The Plan shall be effective as of the Effective Date, provided that the Plan is approved by the stockholders of the Company within twelve (12) months of such date.

ARTICLE IV
ADMINISTRATION

4.1 Composition of Committee. The Plan shall be administered by the Committee, which shall be appointed by the Board. If necessary, in the Board's discretion, to comply with Rule 16b-3 under the Exchange Act or relevant securities exchange or inter-dealer quotation service, the Committee shall consist solely of two (2) or more Directors who are each (i) "non-employee directors" within the meaning of Rule 16b-3 and (ii) "independent" for purposes of any applicable listing requirements;. If a member of the Committee shall be eligible to receive an Award under the Plan, such Committee member shall have no authority hereunder with respect to his or her own Award.

4.2 Powers. Subject to the other provisions of the Plan, the Committee shall have the sole authority, in its discretion, to make all determinations under the Plan, including but not limited to (i) determining which Employees, Directors or Consultants shall receive an Award, (ii) the time or times when an Award shall be made (the date of grant of an Award shall be the date on which the Award is awarded by the Committee), (iii) what type of Award shall be granted, (iv) the term of an Award, (v) the date or dates on which an Award vests, (vi) the form of any payment to be made pursuant to an Award, (vii) the terms and conditions of an Award (including the forfeiture of the Award, and/or any financial gain, if the Holder of the Award violates any applicable restrictive covenant thereof), (viii) the Restrictions under a Restricted Stock Award, (ix) the number of Shares which may be issued under an Award, (x) Performance Goals applicable to any Award and certification of the achievement of such goals, and (xi) the waiver of any Restrictions or Performance Goals, subject in all cases to compliance with applicable laws. In making such determinations the Committee may take into account the nature of the services rendered by the respective Employees, Directors and Consultants, their present and potential contribution to the Company's (or the Affiliate's) success and such other factors as the Committee in its discretion may deem relevant.

4.3 Additional Powers. The Committee shall have such additional powers as are delegated to it under the other provisions of the Plan. Subject to the express provisions of the Plan, the Committee is authorized to construe the Plan and the respective Award Agreements executed hereunder, to prescribe such rules and regulations relating to the Plan as it may deem advisable to carry out the intent of the Plan, to determine the terms, restrictions and provisions of each Award and to make all other determinations necessary or advisable for administering the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in any Award Agreement in the manner and to the extent the Committee shall deem necessary, appropriate or expedient to carry it into effect. The determinations of the Committee on the matters referred to in this Article IV shall be conclusive and binding on the Company and all Holders.

4.4 Committee Action. Subject to compliance with all applicable laws, action by the Committee shall require the consent of a majority of the members of the Committee, expressed either orally at a meeting of the Committee or in writing in the absence of a meeting. No member of the Committee shall have any liability for any good faith action, inaction or determination in connection with the Plan.

ARTICLE V
SHARES SUBJECT TO PLAN AND LIMITATIONS THEREON

5.1 Authorized Shares and Award Limits. The Committee may from time to time grant Awards to one or more Employees, Directors and/or Consultants determined by it to be eligible for participation in the Plan in accordance with the provisions of Article VI. Subject to Article XV, the aggregate number of Shares reserved and available for grant and issuance pursuant to this Plan as of the date of adoption of the Plan by the Board, is [two million five hundred thousand (2,500,000)][2] Shares, plus (a) any reserved Shares not issued or subject to outstanding awards granted under the Company's 2019 Stock Plan (the "Prior Plan") on the Effective Date (as defined above), (b) Shares that are subject to awards granted under the Prior Plan cease to be subject to such awards by forfeiture or otherwise after the Effective Date, (c) Shares issued under the Prior Plan before or after the Effective Date pursuant to the exercise of stock options that are, after the Effective Date, forfeited, (d) Shares issued under the Prior Plan that are repurchased by the Company at the original issue price, and (e) Shares that are subject to stock options or other awards under the Prior Plan that are used to pay the exercise price of a stock option or withheld to satisfy tax withholding obligations related to any Award. Shares shall be deemed to have been issued under the Plan solely to the extent actually issued and delivered pursuant to an Award. Subject to Article XV, no more than [two million five hundred thousand (2,500,000)] shares of Common Stock in the aggregate may be issued under this Plan in connection with Incentive Stock Options. To the extent that an Award lapses, expires, is canceled, is terminated unexercised or ceases to be exercisable for any reason, or the rights of its Holder terminate, any Shares subject to such Award shall again be available for the grant of a new Award.

2 Subject to adjustment based on the contemplated reverse stock split to be effected prior to the IPO.

5.2 Types of Shares. The Shares to be issued pursuant to the grant or exercise of an Award may consist of authorized but unissued Shares, Shares purchased on the open market or Shares previously issued and outstanding and reacquired by the Company.

ARTICLE VI
ELIGIBILITY AND TERMINATION OF SERVICE

6.1 Eligibility. Awards made under the Plan may be granted solely to individuals or entities who, at the time of grant, are Employees, Directors or Consultants. An Award may be granted on more than one occasion to the same Employee, Director or Consultant, and, subject to the limitations set forth in the Plan, such Award may include, a Non-qualified Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, an Unrestricted Stock Award, a Distribution Equivalent Right Award, a Performance Stock Award, a Performance Unit Award, a Stock Appreciation Right, a Tandem Stock Appreciation Right, or any combination thereof, and solely for Employees, an Incentive Stock Option.

6.2 Termination of Service. Except to the extent inconsistent with the terms of the applicable Award Agreement and/or the provisions of Section 6.3 or 6.4, the following terms and conditions shall apply with respect to a Holder's Termination of Service with the Company or an Affiliate, as applicable:

(a) The Holder's rights, if any, to exercise any then exercisable Options and/or Stock Appreciation Rights shall terminate:

(i) If such termination is for a reason other than the Holder's Total and Permanent Disability or death, ninety (90) days after the date of such Termination of Service;

(ii) If such termination is on account of the Holder's Total and Permanent Disability, one (1) year after the date of such Termination of Service; or

(iii) If such termination is on account of the Holder's death, one (1) year after the date of the Holder's death.

Upon such applicable date the Holder (and such Holder's estate, designated beneficiary or other legal representative) shall forfeit any rights or interests in or with respect to any such Options and Stock Appreciation Rights. Notwithstanding the foregoing, the Committee, in its sole discretion, may provide for a different time period in the Award Agreement, or may extend the time period, following a Termination of Service, during which the Holder has the right to exercise any vested Non-qualified Stock Option or Stock Appreciation Right, which time period may not extend beyond the expiration date of the Award term.

(b) In the event of a Holder's Termination of Service for any reason prior to the actual or deemed satisfaction and/or lapse of the Restrictions, vesting requirements, terms and conditions applicable to a Restricted Stock Award and/or Restricted Stock Unit Award, such Restricted Stock and/or RSUs shall immediately be canceled, and the Holder (and such Holder's estate, designated beneficiary or other legal representative) shall forfeit any rights or interests in and with respect to any such Restricted Stock and/or RSUs. Notwithstanding the immediately preceding sentence, the Committee, in its sole discretion, may determine, prior to or within thirty (30) days after the date of such Termination of Service that all or a portion of any such Holder's Restricted Stock and/or RSUs shall not be so canceled and forfeited.

6.3 Special Termination Rule. Except to the extent inconsistent with the terms of the applicable Award Agreement, and notwithstanding anything to the contrary contained in this Article VI, if a Holder's employment with, or status as a Director of, the Company or an Affiliate shall terminate, and if, within ninety (90) days of such termination, such Holder shall become a Consultant, such Holder's rights with respect to any Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and to the extent determined by the Committee in its sole discretion, as if such Holder had been a Consultant for the entire period during which such Award or portion thereof had been outstanding. Should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her employment or Director status had terminated until such time as his or her Consultant status shall terminate, in which case his or her Award, as it may have been reduced in connection with the Holder's becoming a Consultant, shall be treated pursuant to the provisions of Section 6.2, provided, however, that any such Award which is intended to be an Incentive Stock Option shall, upon the Holder's no longer being an Employee, automatically convert to a Non-qualified Stock Option. Should a Holder's status as a Consultant terminate, and if, within ninety (90) days of such termination, such Holder shall become an Employee or a Director, such Holder's rights with respect to any Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and to the extent determined by the Committee in its sole discretion, as if such Holder had been an Employee or a Director, as applicable, for the entire period during which such Award or portion thereof had been outstanding, and, should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her Consultant status had terminated until such time as his or her employment with the Company or an Affiliate, or his or her Director status, as applicable, shall terminate, in which case his or her Award shall be treated pursuant to the provisions of Section 6.2.

6.4 Termination of Service for Cause. Notwithstanding anything in this Article VI or elsewhere in the Plan to the contrary, and unless a Holder's Award Agreement specifically provides otherwise, in the event of a Holder's Termination of Service for Cause, all of such Holder's then outstanding Awards shall expire immediately and be forfeited in their entirety upon such Termination of Service.

ARTICLE VII
OPTIONS

7.1 Option Period. The term of each Option shall be as specified in the Option Agreement; provided, however, that except as set forth in Section 7.3, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant.

7.2 Limitations on Exercise of Option. An Option shall be exercisable in whole or in such installments and at such times as specified in the Option Agreement.

7.3 Special Limitations on Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined at the time the respective Incentive Stock Option is granted) of Shares with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year under all plans of the Company and any parent corporation or subsidiary corporation thereof (both as defined in Section 424 of the Code) which provide for the grant of Incentive Stock Options exceeds One Hundred Thousand Dollars ($100,000) (or such other individual limit as may be in effect under the Code on the date of grant), the portion of such Incentive Stock Options that exceeds such threshold shall be treated as Non-qualified Stock Options. The Committee shall determine, in accordance with applicable provisions of the Code, Treasury Regulations and other administrative pronouncements, which of a Holder's Options, which were intended by the Committee to be Incentive Stock Options when granted to the Holder, will not constitute Incentive Stock Options because of such limitation, and shall notify the Holder of such determination as soon as practicable after such determination. No Incentive Stock Option shall be granted to an Employee if, at the time the Incentive Stock Option is granted, such Employee is a Ten Percent Stockholder, unless (i) at the time such Incentive Stock Option is granted the Option price is at least one hundred ten percent (110%) of the Fair Market Value of the Shares subject to the Incentive Stock Option, and (ii) such Incentive Stock Option by its terms is not exercisable after the expiration of five (5) years from the date of grant. No Incentive Stock Option shall be granted more than ten (10) years from the earlier of the Effective Date or date on which the Plan is approved by the Company's stockholders. The designation by the Committee of an Option as an Incentive Stock Option shall not guarantee the Holder that the Option will satisfy the applicable requirements for "incentive stock option" status under Section 422 of the Code.

7.4 Option Agreement. Each Option shall be evidenced by an Option Agreement in such form and containing such provisions not inconsistent with the other provisions of the Plan as the Committee from time to time shall approve, including, but not limited to, provisions intended to qualify an Option as an Incentive Stock Option. An Option Agreement may provide for the payment of the Option price, in whole or in part, by the delivery of a number of Shares (plus cash if necessary) that have been owned by the Holder for at least six (6) months and having a Fair Market Value equal to such Option price, or such other forms or methods as the Committee may determine from time to time, in each case, subject to such rules and regulations as may be adopted by the Committee. Each Option Agreement shall, solely to the extent inconsistent with the provisions of Sections 6.2, 6.3, and 6.4, as applicable, specify the effect of Termination of Service on the exercisability of the Option. Moreover, without limiting the generality of the foregoing, a Non-qualified Stock Option Agreement may provide for a "cashless exercise" of the Option, in whole or in part, by (a) establishing procedures whereby the Holder, by a properly-executed written notice, directs (i) an immediate market sale or margin loan as to all or a part of Shares to which he is entitled to receive upon exercise of the Option, pursuant to an extension of credit by the Company to the Holder of the Option price, (ii) the delivery of the Shares from the Company directly to a brokerage firm and (iii) the delivery of the Option price from sale or margin loan proceeds from the brokerage firm directly to the Company, or (b) reducing the number of Shares to be issued upon exercise of the Option by the number of such Shares having an aggregate Fair Market Value equal to the Option price (or portion thereof to be so paid) as of the date of the Option's exercise. An Option Agreement may also include provisions relating to: (i) subject to the provisions hereof, accelerated vesting of Options, including but not limited to, upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements and requiring additional "gross-up" payments to Holders to meet any excise taxes or other additional income tax liability imposed as a result of a payment made upon a Change of Control resulting from the operation of the Plan or of such Option Agreement) and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall in its sole discretion determine. The terms and conditions of the respective Option Agreements need not be identical.

7.5 Option Price and Payment. The price at which an Share may be purchased upon exercise of an Option shall be determined by the Committee; provided, however, that such Option price (i) shall not be less than the Fair Market Value of an Share on the date such Option is granted (or 110% of Fair Market Value for an Incentive Stock Option held by Ten Percent Stockholder, as provided in Section 7.3), and (ii) shall be subject to adjustment as provided in Article XV. The Option or portion thereof may be exercised by delivery of an irrevocable notice of exercise to the Company. The Option price for the Option or portion thereof shall be paid in full in the manner prescribed by the Committee as set forth in the Plan and the applicable Option Agreement, which manner, with the consent of the Committee, may include the withholding of Shares otherwise issuable in connection with the exercise of the Option. Separate share certificates shall be issued by the Company for those Shares acquired pursuant to the exercise of an Incentive Stock Option and for those Shares acquired pursuant to the exercise of a Non-qualified Stock Option.

7.6 Stockholder Rights and Privileges. The Holder of an Option shall be entitled to all the privileges and rights of a stockholder of the Company solely with respect to such Shares as have been purchased under the Option and for which share certificates have been registered in the Holder's name.

7.7 Options and Rights in Substitution for Stock or Options Granted by Other Corporations. Options may be granted under the Plan from time to time in substitution for stock options held by individuals employed by entities who become Employees, Directors or Consultants as a result of a merger or consolidation of the employing entity with the Company or any Affiliate, or the acquisition by the Company or an Affiliate of the assets of the employing entity, or the acquisition by the Company or an Affiliate of stock or shares of the employing entity with the result that such employing entity becomes an Affiliate.

7.8 Prohibition Against Re-Pricing. Except to the extent (i) approved in advance by holders of a majority of the shares of the Company entitled to vote generally in the election of directors, or (ii) as a result of any Change of Control or any adjustment as provided in Article XV, the Committee shall not have the power or authority to reduce, whether through amendment or otherwise, the exercise price under any outstanding Option or Stock Appreciation Right, or to grant any new Award or make any payment of cash in substitution for or upon the cancellation of Options and/or Stock Appreciation Rights previously granted.

ARTICLE VIII
RESTRICTED STOCK AWARDS

8.1 Award. A Restricted Stock Award shall constitute an Award of Shares to the Holder as of the date of the Award which are subject to a "substantial risk of forfeiture" as defined under Section 83 of the Code during the specified Restriction Period. At the time a Restricted Stock Award is made, the Committee shall establish the Restriction Period applicable to such Award. Each Restricted Stock Award may have a different Restriction Period, in the discretion of the Committee. The Restriction Period applicable to a particular Restricted Stock Award shall not be changed except as permitted by Section 8.2.

8.2 Terms and Conditions. At the time any Award is made under this Article VIII, the Company and the Holder shall enter into a Restricted Stock Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Company shall cause the Shares to be issued in the name of Holder, either by book-entry registration or issuance of one or more stock certificates evidencing the Shares, which Shares or certificates shall be held by the Company or the stock transfer agent or brokerage service selected by the Company to provide services for the Plan. The Shares shall be restricted from transfer and shall be subject to an appropriate stop-transfer order, and if any certificate is issued, such certificate shall bear an appropriate legend referring to the restrictions applicable to the Shares. After any Shares vest, the Company shall deliver the vested Shares, in book-entry or certificated form in the Company's sole discretion, registered in the name of Holder or his or her legal representatives, beneficiaries or heirs, as the case may be, less any Shares withheld to pay withholding taxes. If provided for under the Restricted Stock Agreement, the Holder shall have the right to vote Shares subject thereto and to enjoy all other stockholder rights, including the entitlement to receive dividends on the Shares during the Restriction Period. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Stock Awards, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the Restriction Period. Such additional terms, conditions or restrictions shall, to the extent inconsistent with the provisions of Sections 6.2, 6.3 and 6.4, as applicable, be set forth in a Restricted Stock Agreement made in conjunction with the Award. Such Restricted Stock Agreement may also include provisions relating to: (i) subject to the provisions hereof, accelerated vesting of Awards, including but not limited to accelerated vesting upon the occurrence of a Change of Control, (ii) tax matters (including provisions covering any applicable Employee wage withholding requirements and requiring additional "gross-up" payments to Holders to meet any excise taxes or other additional income tax liability imposed as a result of a payment made in connection with a Change of Control resulting from the operation of the Plan or of such Restricted Stock Agreement) and (iii) any other matters not inconsistent with the terms and provisions of the Plan that the Committee shall in its sole discretion determine. The terms and conditions of the respective Restricted Stock Agreements need not be identical. All Shares delivered to a Holder as part of a Restricted Stock Award shall be delivered and reported by the Company or the Affiliate, as applicable, to the Holder at the time of vesting.

8.3 Payment for Restricted Stock. The Committee shall determine the amount and form of any payment from a Holder for Shares received pursuant to a Restricted Stock Award, if any, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Shares received pursuant to a Restricted Stock Award, except to the extent otherwise required by law.

ARTICLE IX
UNRESTRICTED STOCK AWARDS

9.1 Award. Shares may be awarded (or sold) to Employees, Directors or Consultants under the Plan which are not subject to Restrictions of any kind, in consideration for past services rendered thereby to the Company or an Affiliate or for other valid consideration.

9.2 Terms and Conditions. At the time any Award is made under this Article IX, the Company and the Holder shall enter into an Unrestricted Stock Agreement setting forth each of the matters contemplated hereby and such other matters as the Committee may determine to be appropriate.

9.3 Payment for Unrestricted Stock. The Committee shall determine the amount and form of any payment from a Holder for Shares received pursuant to an Unrestricted Stock Award, if any, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Shares received pursuant to an Unrestricted Stock Award, except to the extent otherwise required by law.

ARTICLE X
RESTRICTED STOCK UNIT AWARDS

10.1 Award. A Restricted Stock Unit Award shall constitute a promise to grant Shares (or cash equal to the Fair Market Value of Shares) to the Holder at the end of a specified Restriction Period. At the time a Restricted Stock Unit Award is made, the Committee shall establish the Restriction Period applicable to such Award. Each Restricted Stock Unit Award may have a different Restriction Period, in the discretion of the Committee. A Restricted Stock Unit shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares prior to the time the Holder shall receive a distribution of Shares pursuant to Section 10.3.

10.2 Terms and Conditions. At the time any Award is made under this Article X, the Company and the Holder shall enter into a Restricted Stock Unit Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Restricted Stock Unit Agreement shall set forth the individual service-based vesting requirement which the Holder would be required to satisfy before the Holder would become entitled to distribution pursuant to Section 10.3 and the number of Units awarded to the Holder. Such conditions shall be sufficient to constitute a "substantial risk of forfeiture" as such term is defined under Section 409A of the Code. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Restricted Stock Unit Awards in the Restricted Stock Unit Agreement, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the applicable vesting period. The terms and conditions of the respective Restricted Stock Unit Agreements need not be identical.

10.3 Distributions of Shares. The Holder of a Restricted Stock Unit shall be entitled to receive a cash payment equal to the Fair Market Value of a Share, or one Share, as determined in the sole discretion of the Committee and as set forth in the Restricted Stock Unit Agreement, for each Restricted Stock Unit subject to such Restricted Stock Unit Award, if the Holder satisfies the applicable vesting requirement. Such distribution shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the calendar year in which the Restricted Stock Unit first becomes vested (i.e., no longer subject to a "substantial risk of forfeiture").

ARTICLE XI
PERFORMANCE UNIT AWARDS

11.1 Award. A Performance Unit Award shall constitute an Award under which, upon the satisfaction of predetermined individual and/or Company (and/or Affiliate) Performance Goals based on selected Performance Criteria, a cash payment shall be made to the Holder, based on the number of Units awarded to the Holder. At the time a Performance Unit Award is made, the Committee shall establish the Performance Period and applicable Performance Goals. Each Performance Unit Award may have different Performance Goals, in the discretion of the Committee. A Performance Unit Award shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares.

11.2 Terms and Conditions. At the time any Award is made under this Article XI, the Company and the Holder shall enter into a Performance Unit Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Performance Unit Agreement the Performance Period, Performance Criteria and Performance Goals which the Holder and/or the Company would be required to satisfy before the Holder would become entitled to payment pursuant to Section 11.3, the number of Units awarded to the Holder and the dollar value or formula assigned to each such Unit. Such payment shall be subject to a "substantial risk of forfeiture" under Section 409A of the Code. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Performance Unit Awards, including, but not limited to, rules pertaining to the effect of Termination of Service prior to expiration of the applicable performance period. The terms and conditions of the respective Performance Unit Agreements need not be identical.

11.3 Payments. The Holder of a Performance Unit shall be entitled to receive a cash payment equal to the dollar value assigned to such Unit under the applicable Performance Unit Agreement if the Holder and/or the Company satisfy (or partially satisfy, if applicable under the applicable Performance Unit Agreement) the Performance Goals set forth in such Performance Unit Agreement. All payments shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year to which such performance goals and objectives relate.

ARTICLE XII
PERFORMANCE STOCK AWARDS

12.1 Award. A Performance Stock Award shall constitute a promise to grant Shares (or cash equal to the Fair Market Value of Shares) to the Holder at the end of a specified Performance Period subject to achievement of specified Performance Goals. At the time a Performance Stock Award is made, the Committee shall establish the Performance Period and applicable Performance Goals based on selected Performance Criteria. Each Performance Stock Award may have different Performance Goals, in the discretion of the Committee. A Performance Stock Award shall not constitute an equity interest in the Company and shall not entitle the Holder to voting rights, dividends or any other rights associated with ownership of Shares unless and until the Holder shall receive a distribution of Shares pursuant to Section 11.3.

12.2 Terms and Conditions. At the time any Award is made under this Article XII, the Company and the Holder shall enter into a Performance Stock Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Performance Stock Agreement the Performance Period, selected Performance Criteria and Performance Goals which the Holder and/or the Company would be required to satisfy before the Holder would become entitled to the receipt of Shares pursuant to such Holder's Performance Stock Award and the number of Shares subject to such Performance Stock Award. Such distribution shall be subject to a "substantial risk of forfeiture" under Section 409A of the Code. If such Performance Goals are achieved, the distribution of Shares (or the payment of cash, as determined in the sole discretion of the Committee), shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year to which such goals and objectives relate. At the time of such Award, the Committee may, in its sole discretion, prescribe additional terms and conditions or restrictions relating to Performance Stock Awards, including, but not limited to, rules pertaining to the effect of the Holder's Termination of Service prior to the expiration of the applicable performance period. The terms and conditions of the respective Performance Stock Agreements need not be identical.

12.3 Distributions of Shares. The Holder of a Performance Stock Award shall be entitled to receive a cash payment equal to the Fair Market Value of a Share, or one Share, as determined in the sole discretion of the Committee, for each Performance Stock Award subject to such Performance Stock Agreement, if the Holder satisfies the applicable vesting requirement. Such distribution shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year to which such performance goals and objectives relate.

ARTICLE XIII
DISTRIBUTION EQUIVALENT RIGHTS

13.1 Award. A Distribution Equivalent Right shall entitle the Holder to receive bookkeeping credits, cash payments and/or Share distributions equal in amount to the distributions that would have been made to the Holder had the Holder held a specified number of Shares during the specified period of the Award.

13.2 Terms and Conditions. At the time any Award is made under this Article XIII, the Company and the Holder shall enter into a Distribution Equivalent Rights Award Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Distribution Equivalent Rights Award Agreement the terms and conditions, if any, including whether the Holder is to receive credits currently in cash, is to have such credits reinvested (at Fair Market Value determined as of the date of reinvestment) in additional Shares or is to be entitled to choose among such alternatives. Such receipt shall be subject to a "substantial risk of forfeiture" under Section 409A of the Code and, if such Award becomes vested, the distribution of such cash or Shares shall be made no later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year in which the Holder's interest in the Award vests. Distribution Equivalent Rights Awards may be settled in cash or in Shares, as set forth in the applicable Distribution Equivalent Rights Award Agreement. A Distribution Equivalent Rights Award may, but need not be, awarded in tandem with another Award (other than an Option or a SAR), whereby, if so awarded, such Distribution Equivalent Rights Award shall expire, terminate or be forfeited by the Holder, as applicable, under the same conditions as under such other Award.

13.3 Interest Equivalents. The Distribution Equivalent Rights Award Agreement for a Distribution Equivalent Rights Award may provide for the crediting of interest on a Distribution Rights Award to be settled in cash at a future date (but in no event later than by the fifteenth (15^{th}) day of the third (3^{rd}) calendar month next following the end of the Company's fiscal year in which such interest is credited and vested), at a rate set forth in the applicable Distribution Equivalent Rights Award Agreement, on the amount of cash payable thereunder.

ARTICLE XIV
STOCK APPRECIATION RIGHTS

14.1 Award. A Stock Appreciation Right shall constitute a right, granted alone or in connection with a related Option, to receive a payment equal to the increase in value of a specified number of Shares between the date of Award and the date of exercise.

14.2 Terms and Conditions. At the time any Award is made under this Article XIV, the Company and the Holder shall enter into a Stock Appreciation Right Agreement setting forth each of the matters contemplated thereby and such other matters as the Committee may determine to be appropriate. The Committee shall set forth in the applicable Stock Appreciation Right Agreement the terms and conditions of the Stock Appreciation Right, including (i) the base value (the "Base Value") for the Stock Appreciation Right, which shall be not less than the Fair Market Value of an Share on the date of grant of the Stock Appreciation Right, (ii) the number of Shares subject to the Stock Appreciation Right, (iii) the period during which the Stock Appreciation Right may be exercised; provided, however, that no Stock Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of its grant, and (iv) any other special rules and/or requirements which the Committee imposes upon the Stock Appreciation Right. Upon the exercise of some or all of the portion of a Stock Appreciation Right, the Holder shall receive a payment from the Company, in cash or in the form of Shares having an equivalent Fair Market Value or in a combination of both, as determined in the sole discretion of the Committee, equal to the product of:

(a) The excess of (i) the Fair Market Value of an Share on the date of exercise, over (ii) the Base Value, multiplied by,

(b) The number of Shares with respect to which the Stock Appreciation Right is exercised.

14.3 Tandem Stock Appreciation Rights. If the Committee grants a Stock Appreciation Right which is intended to be a Tandem Stock Appreciation Right, the Tandem Stock Appreciation Right shall be granted at the same time as the related Option, and the following special rules shall apply:

(a) The Base Value shall be equal to or greater than the per Share exercise price under the related Option;

(b) The Tandem Stock Appreciation Right may be exercised for all or part of the Shares which are subject to the related Option, but solely upon the surrender by the Holder of the Holder's right to exercise the equivalent portion of the related Option (and when a Share is purchased under the related Option, an equivalent portion of the related Tandem Stock Appreciation Right shall be canceled);

(c) The Tandem Stock Appreciation Right shall expire no later than the date of the expiration of the related Option;

(d) The value of the payment with respect to the Tandem Stock Appreciation Right may be no more than one hundred percent (100%) of the difference between the per Share exercise price under the related Option and the Fair Market Value of the Shares subject to the related Option at the time the Tandem Stock Appreciation Right is exercised, multiplied by the number of the Shares with respect to which the Tandem Stock Appreciation Right is exercised; and

(e) The Tandem Stock Appreciation Right may be exercised solely when the Fair Market Value of the Shares subject to the related Option exceeds the per Share exercise price under the related Option.

ARTICLE XV
RECAPITALIZATION OR REORGANIZATION

15.1 Adjustments to Shares. The shares with respect to which Awards may be granted under the Plan are Shares as presently constituted; provided, however, that if, and whenever, prior to the expiration or distribution to the Holder of Shares underlying an Award theretofore granted, the Company shall effect a subdivision or consolidation of the Shares or the payment of an Share dividend on Shares without receipt of consideration by the Company, the number of Shares with respect to which such Award may thereafter be exercised or satisfied, as applicable, (i) in the event of an increase in the number of outstanding Shares, shall be proportionately increased, and the purchase price per Share shall be proportionately reduced, and (ii) in the event of a reduction in the number of outstanding Shares, shall be proportionately reduced, and the purchase price per Share shall be proportionately increased. Notwithstanding the foregoing or any other provision of this Article XV, any adjustment made with respect to an Award (x) which is an Incentive Stock Option, shall comply with the requirements of Section 424(a) of the Code, and in no event shall any adjustment be made which would render any Incentive Stock Option granted under the Plan to be other than an "incentive stock option" for purposes of Section 422 of the Code, and (y) which is a Non-qualified Stock Option, shall comply with the requirements of Section 409A of the Code, and in no event shall any adjustment be made which would render any Non-qualified Stock Option granted under the Plan to become subject to Section 409A of the Code.

15.2 Recapitalization. If the Company recapitalizes or otherwise changes its capital structure, thereafter upon any exercise or satisfaction, as applicable, of a previously granted Award, the Holder shall be entitled to receive (or entitled to purchase, if applicable) under such Award, in lieu of the number of Shares then covered by such Award, the number and class of shares and securities to which the Holder would have been entitled pursuant to the terms of the recapitalization if, immediately prior to such recapitalization, the Holder had been the holder of record of the number of Shares then covered by such Award.

15.3 Other Events. In the event of changes to the outstanding Shares by reason of an extraordinary cash dividend, reorganization, merger, consolidation, combination, split-up, spin-off, exchange or other relevant change in capitalization occurring after the date of the grant of any Award and not otherwise provided for under this Article XV, any outstanding Awards and any Award Agreements evidencing such Awards shall be adjusted by the Board in its discretion in such manner as the Board shall deem equitable or appropriate taking into consideration the applicable accounting and tax consequences, as to the number and price of Shares or other consideration subject to such Awards. In the event of any adjustment pursuant to Sections 15.1, 15.2 or this Section 15.3, the aggregate number of Shares available under the Plan pursuant to Section 5.1 may be appropriately adjusted by the Board, the determination of which shall be conclusive. In addition, the Committee may make provision for a cash payment to a Holder or a person who has an outstanding Award. In addition, the Committee may make provision for a cash payment to a Holder or a person who has an outstanding Award.

15.5 Change of Control. The Committee may, in its sole discretion, at the time an Award is made or at any time prior to, coincident with or after the time of a Change of Control, cause any Award either (i) to be canceled in consideration of a payment in cash or other consideration in amount per share equal to the excess, if any, of the price or implied price per Share in the Change of Control over the per Share exercise, base or purchase price of such Award, which may be paid immediately or over the vesting schedule of the Award; (ii) to be assumed, or new rights substituted therefore, by the surviving corporation or a parent or subsidiary of such surviving corporation following such Change of Control; (iii) accelerate any time periods, or waive any other conditions, relating to the vesting, exercise, payment or distribution of an Award so that any Award to a Holder whose employment has been terminated as a result of a Change of Control may be vested, exercised, paid or distributed in full on or before a date fixed by the Committee; (iv) to be purchased from a Holder whose employment has been terminated as a result of a Change of Control, upon the Holder's request, for an amount of cash equal to the amount that could have been obtained upon the exercise, payment or distribution of such rights had such Award been currently exercisable or payable; or (v) terminate any then outstanding Award or make any other adjustment to the Awards then outstanding as the Committee deems necessary or appropriate to reflect such transaction or change. The number of Shares subject to any Award shall be rounded to the nearest whole number.

15.6 Powers Not Affected. The existence of the Plan and the Awards granted hereunder shall not affect in any way the right or power of the Board or of the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change of the Company's capital structure or business, any merger or consolidation of the Company, any issue of debt or equity securities ahead of or affecting Shares or the rights thereof, the dissolution or liquidation of the Company or any sale, lease, exchange or other disposition of all or any part of its assets or business or any other corporate act or proceeding.

15.7 No Adjustment for Certain Awards. Except as hereinabove expressly provided, the issuance by the Company of shares of any class or securities convertible into shares of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of shares or obligations of the Company convertible into such shares or other securities, and in any case whether or not for fair value, shall not affect previously granted Awards, and no adjustment by reason thereof shall be made with respect to the number of Shares subject to Awards theretofore granted or the purchase price per Share, if applicable.

ARTICLE XVI
AMENDMENT AND TERMINATION OF PLAN

The Plan shall continue in effect, unless sooner terminated pursuant to this Article XVI, until the tenth (10^{th}) anniversary of the date on which it is adopted by the Board (except as to Awards outstanding on that date). The Board in its discretion may terminate the Plan at any time with respect to any shares for which Awards have not theretofore been granted; provided, however, that the Plan's termination shall not materially and adversely impair the rights of a Holder with respect to any Award theretofore granted without the consent of the Holder. The Board shall have the right to alter or amend the Plan or any part hereof from time to time; provided, however, that without the approval by a majority of the votes cast at a meeting of stockholders at which a quorum representing a majority of the shares of the Company entitled to vote generally in the election of directors is present in person or by proxy, no amendment or modification of the Plan may (i) materially increase the benefits accruing to Holders, (ii) except as otherwise expressly provided in Article XV, materially increase the number of Shares subject to the Plan or the individual Award Agreements specified in Article V, (iii) materially modify the requirements for participation in the Plan, or (iv) amend, modify or suspend Section 7.7 (re-pricing prohibitions) or this Article XVI. In addition, no change in any Award theretofore granted may be made which would materially and adversely impair the rights of a Holder with respect to such Award without the consent of the Holder (unless such change is required in order to exempt the Plan or any Award from Section 409A of the Code).

ARTICLE XVII
MISCELLANEOUS

17.1 No Right to Award. Neither the adoption of the Plan by the Company nor any action of the Board or the Committee shall be deemed to give an Employee, Director or Consultant any right to an Award except as may be evidenced by an Award Agreement duly executed on behalf of the Company, and then solely to the extent and on the terms and conditions expressly set forth therein.

17.2 No Rights Conferred. Nothing contained in the Plan shall (i) confer upon any Employee any right with respect to continuation of employment with the Company or any Affiliate, (ii) interfere in any way with any right of the Company or any Affiliate to terminate the employment of an Employee at any time, (iii) confer upon any Director any right with respect to continuation of such Director's membership on the Board, (iv) interfere in any way with any right of the Company or an Affiliate to terminate a Director's membership on the Board at any time, (v) confer upon any Consultant any right with respect to continuation of his or her consulting engagement with the Company or any Affiliate, or (vi) interfere in any way with any right of the Company or an Affiliate to terminate a Consultant's consulting engagement with the Company or an Affiliate at any time.

17.3 Other Laws; No Fractional Shares; Withholding. The Company shall not be obligated by virtue of any provision of the Plan to recognize the exercise of any Award or to otherwise sell or issue Shares in violation of any laws, rules or regulations, and any postponement of the exercise or settlement of any Award under this provision shall not extend the term of such Award. Neither the Company nor its directors or officers shall have any obligation or liability to a Holder with respect to any Award (or Shares issuable thereunder) (i) that shall lapse because of such postponement, or (ii) for any failure to comply with the requirements of any applicable law, rules or regulations, including but not limited to any failure to comply with the requirements of Section 409A of this Code. No fractional Shares shall be delivered, nor shall any cash in lieu of fractional Shares be paid. The Company shall have the right to deduct in cash (whether under this Plan or otherwise) in connection with all Awards any taxes required by law to be withheld and to require any payments required to enable it to satisfy its withholding obligations. In the case of any Award satisfied in the form of Shares, no Shares shall be issued unless and until arrangements satisfactory to the Company shall have been made to satisfy any tax withholding obligations applicable with respect to such Award. Subject to such terms and conditions as the Committee may impose, the Company shall have the right to retain, or the Committee may, subject to such terms and conditions as it may establish from time to time, permit Holders to elect to tender, Shares (including Shares issuable in respect of an Award) to satisfy, in whole or in part, the amount required to be withheld.

17.4 No Restriction on Corporate Action. Nothing contained in the Plan shall be construed to prevent the Company or any Affiliate from taking any corporate action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any Award made under the Plan. No Employee, Director, Consultant, beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

17.5 Restrictions on Transfer. No Award under the Plan or any Award Agreement and no rights or interests herein or therein, shall or may be assigned, transferred, sold, exchanged, encumbered, pledged or otherwise hypothecated or disposed of by a Holder except (i) by will or by the laws of descent and distribution, or (ii) where permitted under applicable tax rules, by gift to any Family Member of the Holder, subject to compliance with applicable laws. An Award may be exercisable during the lifetime of the Holder only by such Holder or by the Holder's guardian or legal representative unless it has been transferred by gift to a Family Member of the Holder, in which case it shall be exercisable solely by such transferee. Notwithstanding any such transfer, the Holder shall continue to be subject to the withholding requirements provided for under Section 17.3 hereof.

17.6 Beneficiary Designations. Each Holder may, from time to time, name a beneficiary or beneficiaries (who may be contingent or successive beneficiaries) for purposes of receiving any amount which is payable in connection with an Award under the Plan upon or subsequent to the Holder's death. Each such beneficiary designation shall serve to revoke all prior beneficiary designations, be in a form prescribed by the Company and be effective solely when filed by the Holder in writing with the Company during the Holder's lifetime. In the absence of any such written beneficiary designation, for purposes of the Plan, a Holder's beneficiary shall be the Holder's estate.

17.7 Rule 16b-3. It is intended that the Plan and any Award made to a person subject to Section 16 of the Exchange Act shall meet all of the requirements of Rule 16b-3. If any provision of the Plan or of any such Award would disqualify the Plan or such Award under, or would otherwise not comply with the requirements of, Rule 16b-3, such provision or Award shall be construed or deemed to have been amended as necessary to conform to the requirements of Rule 16b-3.

17.8 Clawback Policy. Notwithstanding any contained herein or in any incentive "performance based" Awards under the Plan shall be subject to reduction, forfeiture or repayment by reason of a correction or restatement of the Company's financial information if and to the extent such reduction or repayment is required by any applicable law.

17.9 Section 409A. Notwithstanding any other provision of the Plan, the Committee shall have no authority to issue an Award under the Plan with terms and/or conditions which would cause such Award to constitute non-qualified "deferred compensation" under Section 409A of the Code unless such Award shall be structured to be exempt from or comply with all requirements of Code Section 409A. The Plan and all Award Agreements are intended to comply with the requirements of Section 409A of the Code (or to be exempt therefrom) and shall be so interpreted and construed and no amount shall be paid or distributed from the Plan unless and until such payment complies with all requirements of Code Section 409A. It is the intent of the Company that the provisions of this Agreement and all other plans and programs sponsored by the Company be interpreted to comply in all respects with Code Section 409A, however, the Company shall have no liability to the Holder, or any successor or beneficiary thereof, in the event taxes, penalties or excise taxes may ultimately be determined to be applicable to any payment or benefit received by the Holder or any successor or beneficiary thereof.

17.10 Indemnification. Each person who is or shall have been a member of the Committee or of the Board shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred thereby in connection with or resulting from any claim, action, suit, or proceeding to which such person may be made a party or may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid thereby in settlement thereof, with the Company's approval, or paid thereby in satisfaction of any judgment in any such action, suit, or proceeding against such person; provided, however, that such person shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive and shall be independent of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or By-laws, by contract, as a matter of law, or otherwise.

17.11 Other Benefit Plans. No Award, payment or amount received hereunder shall be taken into account in computing an Employee's salary or compensation for the purposes of determining any benefits under any pension, retirement, life insurance or other benefit plan of the Company or any Affiliate, unless such other plan specifically provides for the inclusion of such Award, payment or amount received. Nothing in the Plan shall be construed to limit the right of the Company to establish other plans or to pay compensation to its employees, in cash or property, in a manner which is not expressly authorized under the Plan.

17.12 Limits of Liability. Any liability of the Company with respect to an Award shall be based solely upon the contractual obligations created under the Plan and the Award Agreement. None of the Company, any member of the Board nor any member of the Committee shall have any liability to any party for any action taken or not taken, in good faith, in connection with or under the Plan.

17.13 Governing Law. Except as otherwise provided herein, the Plan shall be construed in accordance with the laws of the State of Nevada, without regard to principles of conflicts of law.

17.14 Severability of Provisions. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such invalid or unenforceable provision had not been included in the Plan.

17.15 No Funding. The Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of funds or assets to ensure the payment of any Award. Prior to receipt of Shares or a cash distribution pursuant to the terms of an Award, such Award shall represent an unfunded unsecured contractual obligation of the Company and the Holder shall have no greater claim to the Shares underlying such Award or any other assets of the Company or Affiliate than any other unsecured general creditor.

17.16 Headings. Headings used throughout the Plan are for convenience only and shall not be given legal significance.

NOTE AND WARRANT PURCHASE AGREEMENT

THIS NOTE AND WARRANT PURCHASE AGREEMENT (this "**Agreement**"), is dated as of [_____], 2020, by and between Agrify Corporation, a Nevada corporation (the "**Company**"), and the Purchasers identified on **Schedule 1** hereto (the "**Purchasers**").

WHEREAS, the Company and the Purchasers are executing and delivering this Agreement in reliance upon an exemption from securities registration afforded by the provisions of Section 4(2) and/or Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the Securities Act of 1933, as amended (the "**1933 Act**");

WHEREAS, the parties desire that, upon the terms and subject to the conditions contained herein, the Company shall issue and sell to the Purchasers, as provided herein, and the Purchasers shall purchase, in the aggregate, (i) up to $13,500,000 of principal amount of promissory notes of the Company ("**Note**" or "**Notes**") convertible into shares of the Company's common stock (the "**Common Stock**")**,** substantially in the form attached hereto as **Exhibit A.**

NOW, THEREFORE, in consideration of the mutual covenants and other agreements contained in this Agreement the Company and the Purchasers hereby agree as follows:

1. Closing Date; Issuance of Notes and Warrants.

(a) The initial closing (the "**Initial Closing**") of the purchase and sale of the Notes and Warrants (as defined below) to be acquired by the Purchasers from the Company under this Agreement shall take place at such time as the Company and the Purchasers shall mutually agree and upon the satisfaction or waiver of all other conditions to closing set forth in this Agreement. After the Initial Closing, the Company may conduct any number of additional closings (each, an "**Additional Closing**" and, together with the Initial Closing, a "**Closing**"). The minimum subscription amount for any Purchaser is $500,000, which may be waived by the Company in its sole discretion. Subject to the satisfaction or waiver of the terms and conditions of this Agreement, on each Closing Date, such Purchaser shall purchase and the Company shall sell to each such Purchaser a Note in the principal amount set forth on **Schedule 1** and on the signature page hereto for the purchase price set forth thereon. The aggregate principal amount of the Notes to be purchased by the Purchasers pursuant to this Agreement shall be up to $13,500,000.

(b) Each Purchaser shall be issued warrants to purchase a number of shares of the Company's common stock (the "**Common Stock**") equal to 10% of the principal amount of Notes purchased by such Purchasers at an exercise price per share equal to $0.01 (the "**Warrants**"). In the event the Company determines to extend the initial maturity date of the Notes from one year to two years in accordance with the terms of the Notes (the "**Maturity Date Extension**"), the Company shall issue to each Purchaser additional Warrants to purchase a number of shares of Common Stock equal to 10% of the principal amount of Notes purchased by the Purchaser. The Warrants, in substantially the form attached hereto as **Exhibit B**, shall expire upon the date that is five years following issuance date of such Warrants.

(c) The Company has authorized and has reserved and covenants to continue to reserve, free of preemptive rights and other similar contractual rights of stockholders, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of the Notes and exercise of the Warrants then outstanding.

2. Purchaser Representations and Warranties. Each of the Purchasers hereby represents and warrants to and agrees with the Company with respect only to such Purchaser that:

(a) Organization and Standing of the Purchaser. Purchaser, to the extent applicable, is an entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.

(b) Authorization and Power. Such Purchaser has the requisite power and authority to enter into and perform this Agreement and the other Transaction Documents (as defined in Section 3(c) hereof) and to purchase the Notes being sold to it hereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents by such Purchaser and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action, and no further consent or authorization of Purchaser or its board of directors or stockholders, if applicable, is required. This Agreement and the other Transaction Documents have been duly authorized, executed and delivered by such Purchaser and constitutes, or shall constitute, when executed and delivered, a valid and binding obligation of such Purchaser, enforceable against Purchaser in accordance with the terms thereof.

(c) No Conflicts. The execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation by such Purchaser of the transactions contemplated hereby and thereby or relating hereto do not and will not (i) result in a violation of such Purchaser's charter documents, bylaws or other organizational documents, if applicable; (ii) conflict with nor constitute a default (or an event which with notice or lapse of time or both would become a default) under any agreement to which such Purchaser is a party; nor (iii) result in a violation of any law, rule, or regulation, or any order, judgment or decree of any court or governmental agency applicable to such Purchaser or its properties (except for such conflicts, defaults and violations as would not, individually or in the aggregate, have a material adverse effect on Purchaser). Such Purchaser is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement and the other Transaction Documents nor to purchase the Securities in accordance with the terms hereof, provided that for purposes of the representation made in this sentence, such Purchaser is assuming and relying upon the accuracy of the relevant representations and agreements of the Company herein.

(d) Information on Company. Purchaser is familiar with the business, plans and financial condition of the Company; Purchaser has received all materials that have been requested by Purchaser. Purchaser has had a reasonable opportunity to ask questions of the Company and its representatives, and the Company has answered to the satisfaction of Purchaser all inquiries that Purchaser or Purchaser's representatives have put to it. Purchaser has had access to all additional information that Purchaser has deemed necessary to verify the accuracy of the information set forth in this Agreement, and has taken all the steps necessary to evaluate the merits and risks of an investment as proposed under this Agreement.

(e) Information on Purchaser. Such Purchaser is an "**accredited investor**," as such term is defined in Regulation D promulgated by the Commission under the 1933 Act, is experienced in investments and business matters, has made investments of a speculative nature and has purchased securities of United States publicly-owned companies in private placements in the past and, with its representatives, has such knowledge and experience in financial, tax and other business matters as to enable such Purchaser to utilize the information made available by the Company to evaluate the merits and risks of and to make an informed investment decision with respect to the proposed purchase, which represents a speculative investment. Such Purchaser has the authority and is duly and legally qualified to purchase and own the Securities. Such Purchaser is able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof. The information set forth on **Schedule 1** hereto regarding such Purchaser is accurate.

(f) Purchase of Notes. On the Closing Date, such Purchaser will purchase the Notes as principal for its own account for investment only and not with a view toward, or for resale in connection with, the public sale or any distribution thereof.

(g) Compliance with Securities Act. Such Purchaser understands and agrees that the Notes have not been registered under the 1933 Act or any applicable state securities laws, by reason of their issuance in a transaction that does not require registration under the 1933 Act (based in part on the accuracy of the representations and warranties of the Purchaser contained herein).

(h) Communication of Offer. Purchaser is not entering into this Agreement or purchasing the Notes as a result of or subsequent to any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, or presented at any seminar or meeting, or any solicitation by a person other than a representative of the Company with which Purchaser had a pre-existing relationship.

(i) Restricted Securities. Such Purchaser understands that the Notes have not been registered under the 1933 Act and such Purchaser will not sell, offer to sell, assign, pledge, hypothecate or otherwise transfer any of the Notes unless pursuant to an effective registration statement under the 1933 Act, or unless an exemption from registration is available. Notwithstanding anything to the contrary contained in this Agreement, such Purchaser may transfer (without restriction and without the need for an opinion of counsel) the Securities to its Affiliates (as defined below) provided that each such Affiliate is an "accredited investor" under Regulation D and such Affiliate agrees to be bound by the terms and conditions of this Agreement. For the purposes of this Agreement, an "**Affiliate**" of any person or entity means any other person or entity directly or indirectly controlling, controlled by or under direct or indirect common control with such person or entity. Each Subsidiary is an Affiliate of the Company. For purposes of this definition, "**control**" means the power to direct the management and policies of such person or firm, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

(j) No Governmental Review. Such Purchaser understands that no United States federal or state agency or any other governmental or state agency has passed on or made recommendations or endorsement of the Securities or the suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(k) Correctness of Representations. Purchaser represents that the foregoing representations and warranties are true and correct as of the date hereof and, unless Purchaser otherwise notifies the Company prior to the Closing Date, shall be true and correct as of the Closing Date.

(l) Confidential Information. Such Purchaser agrees that such Purchaser and its employees, agents and representatives will keep confidential and will not disclose, divulge or use (other than for purposes of monitoring its investment in the Company) any confidential information which such Purchaser may obtain from the Company pursuant to financial statements, reports and other materials submitted by the Company to such Purchaser pursuant to this Agreement, unless such information is known to the public through no fault of such Purchaser or his or its employees or representatives; provided, however, that a Purchaser may disclose such information (i) to its attorneys, accountants and other professionals in connection with their representation of such Purchaser in connection with such Purchaser's investment in the Company, (ii) to any prospective permitted transferee of the Notes, so long as the prospective transferee agrees to be bound by the provisions of this Section 2(l), or (iii) to any general partner or Affiliate of such Purchaser.

(m) Survival. The foregoing representations and warranties shall survive the Closing Date.

3. Company Representations and Warranties. Except as set forth herein, the Company represents and warrants to and agrees with each Purchaser that:

(a) Due Incorporation. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power to own its properties and to carry on its business as presently conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in each jurisdiction where the nature of the business conducted or property owned by it makes such qualification necessary, other than those jurisdictions in which the failure to so qualify would not have a Material Adverse Effect (as defined herein). For purposes of this Agreement, a "**Material Adverse Effect**" shall mean a material adverse effect on the financial condition, results of operations, prospects, properties or business of the Company and its Subsidiaries taken as a whole. For purposes of this Agreement, "**Subsidiary**" means, with respect to any entity at any date, any direct or indirect corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity of which (A) more than 50% of (i) the outstanding capital stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors or other managing body of such entity, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such entity, or (B) is under the actual control of the Company.

(b) Outstanding Stock. All issued and outstanding shares of capital stock and equity interests in the Company have been duly authorized and validly issued and are fully paid and non-assessable.

(c) Authority; Enforceability. This Agreement, the Notes, the Warrants and any other agreements referred to, delivered or required to be delivered together with or pursuant to this Agreement or in connection herewith (collectively "**Transaction Documents**") have been duly authorized, executed and delivered by the Company and are valid and binding agreements of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights generally and to general principles of equity. The Company has full corporate power and authority necessary to enter into and deliver the Transaction Documents and to perform its obligations thereunder.

(d) Capitalization and Additional Issuances. The authorized and outstanding capital stock of the Company and all outstanding rights to acquire or receive, directly or indirectly, any equity of the Company and Subsidiaries as of the date of this Agreement (not including the Securities) are set forth on **Schedule 3(d)**. Except as set forth on **Schedule 3(d)**, there are no options, warrants, or rights to subscribe to, securities, rights, understandings or obligations convertible into or exchangeable for or granting any right to subscribe for any shares of capital stock or other equity interest of the Company or any of the Subsidiaries. The only officer, director, employee and consultant stock option or stock incentive plan or similar plan currently in effect or contemplated by the Company is described on **Schedule 3(d)**. There are no outstanding agreements or preemptive or similar rights affecting the Common Stock.

(e) Consents. Except for the filing of a Form D with the Commission, and any required blue sky filings, no consent, approval, authorization or order of any court, governmental agency or body or arbitrator having jurisdiction over the Company, or the Company's creditors or stockholders is required for the execution by the Company of the Transaction Documents and compliance and performance by the Company of its obligations under the Transaction Documents, including, without limitation, the issuance and sale of the Notes. The Transaction Documents and the Company's performance of its obligations thereunder has been approved by the Company's board of directors in accordance with the Company's Certificate of Incorporation and applicable law.

(f) No Violation or Conflict. Assuming the representations and warranties of the Purchaser in Section 2 are true and correct, neither the entry into the Transaction Documents by the Company, nor the issuance nor the sale of the Notes nor the performance of the Company's obligations under the Transaction Documents by the Company, will:

(i) violate, conflict with, result in a breach of, or constitute a default (or an event which with the giving of notice or the lapse of time or both would be reasonably likely to constitute a default) under (A) the articles or certificate of incorporation, charter or bylaws of the Company, (B) to the Company's knowledge, any decree, judgment, order, law, treaty, rule, regulation or determination applicable to the Company of any court, governmental agency or body, or arbitrator having jurisdiction over the Company or over the properties or assets of the Company or any of its Affiliates, (C) the terms of any bond, debenture, note or any other evidence of indebtedness, or any agreement, stock option or other similar plan, indenture, lease, mortgage, deed of trust or other instrument to which the Company is a party, by which the Company is bound, or to which any of the properties of the Company is subject, or (D) the terms of any "lock-up" or similar provision of any underwriting or similar agreement to which the Company is a party except the violation, conflict, breach, or default of which would not have a Material Adverse Effect; or

(ii) result in the creation or imposition of any lien, charge or encumbrance upon the Notes or any of the assets of the Company; or

(iii) result in the activation of any anti-dilution rights or a reset or repricing of any debt, equity or security instrument of any creditor or equity holder of the Company, or the holder of the right to receive any debt, equity or security instrument of the Company nor result in the acceleration of the due date of any obligation of the Company; or

(iv) result in the triggering of any piggy-back or other registration rights of any person or entity holding securities of the Company or having the right to receive securities of the Company.

(g) The Notes. The Notes upon issuance:

(i) are, or will be, free and clear of any security interests, liens, claims or other encumbrances, subject only to restrictions upon transfer under the 1933 Act and any applicable state securities laws;

(ii) have been, or will be, duly and validly authorized and on the dates of issuance of the Notes, such Notes will be duly and validly issued, fully paid and non-assessable;

(iii) will not have been issued or sold in violation of any preemptive or other similar rights of the holders of any securities of the Company or rights to acquire securities or debt of the Company; and

(iv) will not subject the holders thereof to personal liability by reason of being such holders.

(h) Litigation. There is no pending or, to the best knowledge of the Company, threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, that would affect the execution by the Company or the complete and timely performance by the Company of its obligations under the Transaction Documents. There is no pending or, to the best knowledge of the Company, basis for or threatened action, suit, proceeding or investigation before any court, governmental agency or body, or arbitrator having jurisdiction over the Company, or any of its Affiliates which litigation if adversely determined would have a Material Adverse Effect.

(i) Defaults. To its knowledge, the Company is not in violation of its articles of incorporation or bylaws. The Company is (i) not in default under or in violation of any other material agreement or instrument to which it is a party or by which it or any of its properties are bound or affected, which default or violation would have a Material Adverse Effect, (ii) not in default with respect to any order of any court, arbitrator or governmental body or subject to or party to any order of any court or governmental authority arising out of any action, suit or proceeding under any statute or other law respecting antitrust, monopoly, restraint of trade, unfair competition or similar matters which default would have a Material Adverse Effect, or (iii) not in violation of any statute, rule or regulation of any governmental authority which violation would have a Material Adverse Effect.

(j) No Integrated Offering. Neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales of any security of the Company nor solicited any offers to buy any security of the Company under circumstances that would cause the offer of the Securities pursuant to this Agreement to be integrated with prior offerings by the Company for purposes of impairing the exemptions relied on with respect to the 1933 Act or any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of the Bulletin Board. No prior offering will impair the exemptions relied upon in this Offering or the Company's ability to timely comply with its obligations hereunder. Neither the Company nor any of its Affiliates will take any action or suffer any inaction or conduct any offering other than the transactions contemplated hereby that may be integrated with the offer or issuance of the Securities or that would impair the exemptions relied upon in this Offering or the Company's ability to timely comply with its obligations hereunder.

(k) No General Solicitation. Neither the Company, nor any of its Affiliates, nor to its knowledge, any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the 1933 Act) in connection with the offer or sale of the Notes.

(l) No Disqualification Events. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event.

(l) Certain Fees. No brokers fees, finders' fees or financial fees or commissions will be payable by the Company with respect to the transactions contemplated by this Agreement and the other Transaction Documents

(m) Correctness of Representations. The Company represents that the foregoing representations and warranties are true and correct as of the date hereof and, unless the Company otherwise notifies the Purchasers prior to the Closing Date, shall be true and correct as of the Closing Date.

(n) Survival. The foregoing representations and warranties shall survive the Closing Date.

4. Regulation D Offering. The offer and issuance of the Notes to the Purchasers is being made pursuant to the exemption from the registration provisions of the 1933 Act afforded by Section 4(2) of the 1933 Act and/or Rule 506 of Regulation D promulgated thereunder.

5. **Closing Conditions.**

(a) Conditions Precedent to the Obligation of the Company to Sell the Notes and Warrants. The obligation hereunder of the Company to issue and sell the Notes and Warrants to the Purchasers is subject to the satisfaction or waiver, at or before each Closing, of each of the conditions set forth below. These conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion.

(i) Accuracy of Each Purchaser's Representations and Warranties. Each of the representations and warranties of each Purchaser in this Agreement and the other Transaction Documents shall be true and correct in all respects, except for representations and warranties that are expressly made as of a particular date, which shall be true and correct in all respects as of such date.

(ii) Performance by the Purchasers. Each Purchaser shall have performed, satisfied and complied in all respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Purchaser at or prior to the Closing.

(iii) Delivery of Purchase Price. The purchase price for the Notes shall have been delivered to the Company.

(iv) Delivery of Transaction Documents. The Transaction Documents to which the Purchasers are parties shall have been duly executed and delivered by the Purchasers to the Company.

(b) Conditions Precedent to the Obligation of the Purchasers to Purchase the Notes and Warrants. The obligation hereunder of each Purchaser to acquire and pay for the Notes and Warrants is subject to the satisfaction or waiver, at or before each Closing, of each of the conditions set forth below. These conditions are for each Purchaser's sole benefit and may be waived by such Purchaser at any time in its sole discretion.

(i) Accuracy of the Company's Representations and Warranties. Each of the representations and warranties of the Company in this Agreement and the other Transaction Documents shall be true and correct in all respects, except for representations and warranties that are expressly made as of a particular date, which shall be true and correct in all respects as of such date.

(ii) Performance by the Company. The Company shall have performed, satisfied and complied in all respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing.

(iii) Notes and Warrants. Promptly following each Closing, the Company shall deliver to the Purchasers the Notes and the Warrants being acquired by such Purchaser at the Closing to such address set forth next to each Purchaser's name on the signature pages hereto with respect to such Closing.

(iv) Delivery of Transaction Documents. The Transaction Documents to which the Company is a party shall have been duly executed and delivered by the Company to the Purchasers.

7. Miscellaneous.

(a) Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be provided by electronic transmission (e-mail) as set forth below or to such other email address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (if delivered on a business day during normal business hours where such notice is to be received) on such date, or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received). The addresses for such communications shall be: (i) if to the Company, to: Attn: Raymond Chang, CEO, Email address: raymond.chang@agrify.com, and (ii) if to the Purchasers, to: the email addresses indicated on **Schedule 1** hereto.

(b) Entire Agreement; Assignment. This Agreement and other Transaction Documents delivered in connection herewith represent the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties. Neither the Company nor the Purchasers has relied on any representations not contained or referred to in this Agreement and the documents delivered herewith. No right or obligation of the Company shall be assigned without prior notice to the Purchasers.

(c) Counterparts/Execution. This Agreement may be executed in any number of counterparts and by the different signatories hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. This Agreement may be executed by facsimile transmission, PDF, electronic signature or other similar electronic means with the same force and effect as if such signature page were an original thereof.

(d) Law Governing this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. Any action brought by either party against the other concerning the transactions contemplated by this Agreement shall be brought only in the state courts of New York or in the federal courts located in the state and county of New York. The parties to this Agreement hereby irrevocably waive any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. **The parties executing this Agreement and other agreements referred to herein or delivered in connection herewith on behalf of the Company agree to submit to the in personam jurisdiction of such courts and hereby irrevocably waive trial by jury.** In the event that any provision of this Agreement or any other agreement delivered in connection herewith is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of any agreement. Each party hereby irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding in connection with this Agreement or any other Transaction Document by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law.

(e) Consent to Jurisdiction. Subject to Section 7(d) hereof, the Company and each Purchaser hereby irrevocably waives, and agrees not to assert in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction in New York of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Nothing in this Section shall affect or limit any right to serve process in any other manner permitted by law.

(f) Maximum Payments. Nothing contained herein or in any document referred to herein or delivered in connection herewith shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Purchasers and thus refunded to the Company.

(g) Calendar Days. All references to "days" in the Transaction Documents shall mean calendar days unless otherwise stated. The terms "business days" and "trading days" shall mean days that the New York Stock Exchange is open for trading for three or more hours. Time periods shall be determined as if the relevant action, calculation or time period were occurring in New York City. Any deadline that falls on a non-business day in any of the Transaction Documents shall be automatically extended to the next business day and interest, if any, shall be calculated and payable through such extended period.

(h) Captions: Certain Definitions. The captions of the various sections and paragraphs of this Agreement have been inserted only for the purposes of convenience; such captions are not a part of this Agreement and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Agreement. As used in this Agreement the term "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and a government or any department or agency thereof.

(i) Severability. In the event that any term or provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable law by an authority having jurisdiction and venue, that determination shall not impair or otherwise affect the validity, legality or enforceability: (i) by or before that authority of the remaining terms and provisions of this Agreement, which shall be enforced as if the unenforceable term or provision were deleted, or (ii) by or before any other authority of any of the terms and provisions of this Agreement.

(n) Publicity. The Company agrees that it will not disclose, and will not include in any public announcement, the name of the Purchasers without the consent of the Purchasers unless and until such disclosure is required by law or applicable regulation, and then only to the extent of such requirement.

[SIGNATURE PAGES FOLLOW]

SIGNATURE PAGE OF THE COMPANY TO NOTE AND WARRANT PURCHASE AGREEMENT

Please acknowledge your acceptance of the foregoing Note and Warrant Purchase Agreement by signing and returning a copy to the undersigned whereupon it shall become a binding agreement between us.

AGRIFY CORPORATION

By: _____

Name: Raymond Chang
Title: Chief Executive Officer

SIGNATURE PAGE OF PURCHASERS TO NOTE AND WARRANT PURCHASE AGREEMENT

PURCHASER	**PRINCIPAL AMOUNT OF NOTE / PURCHASE PRICE**
Name: Address: Taxpayer ID#: _____ _____ (Signature) By:	$_____

LIST OF EXHIBITS AND SCHEDULES

Schedule 1	List of Purchasers
Schedule 3(d)	Capitalization and Additional Issuances
Exhibit A	Form of Note
Exhibit B	Form of Warrant

SCHEDULE 1

PURCHASER, ADDRESS AND EMAIL ADDRESS	PRINCIPAL AMOUNT AND PURCHASE PRICE
TOTALS	

SCHEDULE TO NOTE PURCHASE AGREEMENT

Schedule 3(d)
Capitalization and Additional Issuances

Exhibit A
Form of Note

Exhibit B
Form of Warrant

THE ISSUANCE AND SALE OF THIS NOTE AND THE UNDERLYING SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE BORROWER.

Principal Amount: $_____ **Issuance Date: _____, 2020**

CONVERTIBLE PROMISSORY NOTE

FOR VALUE RECEIVED, **AGRIFY CORPORATION,** a Nevada corporation (hereinafter called "**Borrower**"), hereby promises to pay to the order of _____ (the "**Holder**"), without demand, the sum of _____ **Dollars ($_____),** with interest accruing as stated below, on the Maturity Date (as defined below).

This convertible promissory note (this "**Note**") has been entered into pursuant to the terms of a note and warrant purchase agreement (the "**Purchase Agreement**") dated as of _____, 2020 by and among the Borrower, the Holder and certain other holders (the "**Other Holders**") of convertible promissory notes (the "**Other Notes**") for an aggregate principal amount of up to $13,500,000. Unless otherwise separately defined herein, each capitalized term used in this Note shall have the same meaning as set forth in the Purchase Agreement. The following terms shall apply to this Note:

ARTICLE I

MATURITY DATE; INTEREST PAYMENTS; CONVERSION

1.1 Maturity Date.

(a) The initial maturity date of this Note shall be one year from the issuance date first set forth above, provided however, the Borrower may in its sole discretion extend the initial maturity date of this Note for an additional one year (the "**Maturity Date Extension**") in the event that the Borrower has not repaid in full the principal amount and accrued interest evidenced by this Note by the initial maturity date (the initial maturity date, or such date as extended, is hereinafter referred to as the "**Maturity Date**"). In the event the Borrower determines to effectuate the Maturity Date Extension, the Borrower shall provide written notice to the Holder and issue to the Holder additional Warrants in accordance with the terms of the Purchase Agreement. Notwithstanding anything contained in this Section 1.1 to the contrary, in the event of a Public Transaction (as defined below) during the term of this Note, the Maturity Date shall be the date of the consummation of the Public Transaction. For purposes of this Note, a "**Public Transaction**" shall mean: (i) the Borrower (a) becoming a reporting issuer in the United States through either the filing of a prospectus or registration statement or a merger, business combination or similar transaction with an existing reporting issuer, and (b) the common stock of the Borrower (the "**Common Stock**") or other reporting issuer resulting from such a transaction is listed for trading on NASDAQ, NYSE, NYSE American or similar nationally recognized stock exchange (a "**National Exchange**"), or (ii) upon the consummation of an underwritten public offering of the Common Stock and the Common Stock is listed on a National Exchange.

1.2 Interest Payments. Solely in the event the Borrower determines to effectuate the Maturity Date Extension, the outstanding principal balance of this Note shall bear interest, in arrears accruing as of the issuance date of this Note, at a rate per annum equal to eight percent (8%). Interest shall be computed on the basis of a 360-day year of twelve (12) 30-day months and shall be payable on the Maturity Date, as extended.

1.3 Conversion of Principal and Interest upon Public Transaction. Immediately prior to the consummation of a Public Transaction, the outstanding principal amount of this Note together with all accrued and unpaid interest hereunder shall convert, at the option of the Borrower or the Holder, into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the outstanding principal amount of this Note together with all accrued and unpaid interest hereunder immediately prior to such Public Transaction divided by (ii) the Conversion Price. The "**Conversion Price**" shall mean a price equal to the quotient of (i) the lesser of (x) $70 million and (y) 70% of the aggregate valuation of the Borrower on the Conversion Date as determined in good faith by the Borrower's board of directors divided by (ii) the number of total outstanding shares of Common Stock immediately prior to the consummation of the Public Transaction. For the purposes of this Section 1.3, all shares of Common Stock issuable upon conversion of this Note and the Other Notes (each at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms thereof), all outstanding shares of Series A convertible preferred stock of the Borrower (at an assumed conversion price per share of $7.43, subject to adjustment pursuant to the terms thereof), and the exercise and/or conversion of any other outstanding convertible securities and options shall be deemed to be outstanding.

1.4 Pari Passu. All payments made on this Note and the Other Notes and except as otherwise set forth herein all actions taken by the Borrower with respect to this Note and the Other Notes, shall be made and taken *pari passu* with respect to this Note and the Other Notes.

1.5 Miscellaneous. Principal on this Note and other payments in connection with this Note shall be payable at the Holder's offices as designated above in lawful money of the United States of America in immediately available funds without set-off, deduction or counterclaim. Upon assignment of the interest of Holder in this Note, Borrower shall instead make its payment pursuant to the assignee's instructions upon receipt of written notice thereof.

1.6 Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) Adjustments for Stock Splits and Combinations. If the Borrower shall at any time or from time to time after the Issuance Date, effect a stock split of the outstanding Common Stock, the applicable Conversion Price in effect immediately prior to the stock split shall be proportionately decreased. If the Borrower shall at any time or from time to time after the Issuance Date, combine the outstanding shares of Common Stock, the applicable Conversion Price in effect immediately prior to the combination shall be proportionately increased. Any adjustments under this Section 3.4(a)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(b) Adjustments for Certain Dividends and Distributions. If the Borrower shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in shares of Common Stock, then, and in each event, the applicable Conversion Price in effect immediately prior to such event shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying, the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

(c) Adjustment for Other Dividends and Distributions. If the Borrower shall at any time or from time to time after the Issuance Date, make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in other than shares of Common Stock, then, and in each event, an appropriate revision to the applicable Conversion Price shall be made and provision shall be made (by adjustments of the Conversion Price or otherwise) so that the holders of this Note shall receive upon conversions thereof, in addition to the number of shares of Common Stock receivable thereon, the number of securities of the Borrower which they would have received had this Note been converted into Common Stock on the date of such event and had thereafter, during the period from the date of such event to and including the Conversion Date, retained such securities (together with any distributions payable thereon during such period), giving application to all adjustments called for during such period under this Section 1.5(c) with respect to the rights of the holders of this Note and the Other Notes; provided, however, that if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

(d) Adjustments for Reclassification, Exchange or Substitution. If the Common Stock issuable upon conversion of this Note at any time or from time to time after the Issuance Date shall be changed to the same or different number of shares of any class or classes of stock, whether by reclassification, exchange, substitution or otherwise (other than by way of a stock split or combination of shares or stock dividends provided for in Sections 1.5(a), (b) or (c), then, and in each event, an appropriate revision to the Conversion Price shall be made and provisions shall be made (by adjustments of the Conversion Price or otherwise) so that the Holder shall have the right thereafter to convert this Note into the kind and amount of shares of stock and other securities receivable upon reclassification, exchange, substitution or other change, by holders of the number of shares of Common Stock into which such Note might have been converted immediately prior to such reclassification, exchange, substitution or other change, all subject to further adjustment as provided herein.

(e) Adjustment for Merger or Reorganization, etc. If at any time or from time to time after the Issuance Date there shall occur any reorganization, recapitalization, consolidation, merger or other similar reorganization event (collectively, the "Reorganization Adjustment Event") involving the Borrower (other than in connection with a Public Transaction pursuant to Section 1.3 hereof or pursuant to paragraphs (a) through (d) of this Section 1.6) in which shares of Common Stock (but not shares of the Borrower's Series A Preferred Stock) are converted into or exchanged for securities, cash or other property (other than in connection with a Public Transaction pursuant to Section 1.3 hereof or pursuant to paragraphs (a) through (d) of this Section 1.6), then, following any such Reorganization Adjustment Event, the principal amount of this Note shall thereafter be convertible (without taking into account any limitations or restrictions on the convertibility of this Note), in lieu of the shares of Common Stock, into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Borrower issuable upon conversion of this Note immediately prior to such Reorganization Adjustment Event would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 1.6(e) with respect to the rights and interests thereafter of the holder of this Note, to the end that the provisions set forth in this Section 1.6(e) (including provisions with respect to changes in and other adjustments to the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of this Note.

(f) Adjustment for Delay in Public Transaction/Minimum Revenue Target. Upon conversion of this Note subsequent to January 1, 2021, if (A) a Public Transaction did not occur by December 31, 2020, and (B) the Borrower's revenue for fiscal year 2020 in accordance with GAAP based upon the Borrower's financial statements was lower than $45 million, the Conversion Price then in effect shall be adjusted in accordance with the following formula:

$$P2 = P1 \times 85\%$$

where,

P1 = the Conversion Price in effect immediately prior to such adjustment; and
P2 = the Conversion Price in effect immediately upon such adjustment.

ARTICLE II

EVENTS OF DEFAULT

The occurrence of any of the following events of default ("**Event of Default**") shall, at the option of the Holder hereof, make all sums of principal then remaining unpaid hereon and all other amounts payable hereunder immediately due and payable, upon demand, without presentment or grace period, all of which hereby are expressly waived, except as set forth below:

2.1 Failure to Pay Principal. The Borrower fails to pay any installment of principal or interest under this Note within ten (10) business days after such amounts are due.

2.2 Breach of Covenant. The Borrower breaches any material covenant or other term or condition of the Purchase Agreement, Transaction Documents or this Note, except for a breach of payment, in any material respect and such breach, if subject to cure, continues for a period of thirty (30) days after written notice to the Borrower from the Holder.

2.3 Breach of Representations and Warranties. The Borrower is advised by written notice from the Holder that a material representation or warranty of the Borrower made herein or in the Purchase Agreement was false or misleading in any material respect as of the date made and the Closing Date.

2.4 Liquidation. Any dissolution, liquidation or winding up by Borrower or a Subsidiary of a substantial portion of their business.

2.5 Cessation of Operations. Any cessation of operations by Borrower or a Subsidiary.

2.6 Bankruptcy.

(a) Borrower files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; or

(b) An involuntary petition is filed against Borrower under any bankruptcy statute now or hereafter in effect, and such petition is not dismissed or discharged within 60 days, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of Borrower.

ARTICLE III

MISCELLANEOUS

3.1 Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder hereof in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing hereunder are cumulative to, and not exclusive of, any rights or remedies otherwise available.

3.2 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with the terms of the Purchase Agreement.

3.3 Amendment Provision. The term "Note" and all reference thereto, as used throughout this instrument, shall mean this instrument as originally executed, or if later amended or supplemented, then as so amended or supplemented. This Note may be amended, modified or terminated only by a written instrument executed by the Borrower and the Holders holding a majority of the aggregate principal amount of this Note and the Other Notes, taken as a whole.

3.4 Assignability. This Note shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Holder and its successors and assigns. The Borrower may not assign its obligations under this Note.

3.5 Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles that would result in the application of the substantive laws of another jurisdiction. Any action brought by either party against the other concerning the transactions contemplated by this Agreement must be brought only in the civil or state courts of New York or in the federal courts located in the State and county of New York. Both parties and the individual signing this Agreement on behalf of the Borrower agree to submit to the jurisdiction of such courts. In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or unenforceability of any other provision of this Note.

3.6 Non-Business Days. Whenever any payment or any action to be made shall be due on a Saturday, Sunday or a public holiday under the laws of the State of New York, such payment may be due or action shall be required on the next succeeding business day.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has caused this Convertible Promissory Note to be signed in its name by an authorized officer as of the date first above written.

AGRIFY CORPORATION

By: _____

Name: Raymond Chang
Title: Chief Executive Officer

Exhibit 10.16

INTELLECTUAL PROPERTY ASSIGNMENT

AND TRANSFER AGREEMENT (NUNC PRO TUNC)

This INTELLECTUAL PROPERTY ASSIGNMENT AND TRANSFER AGREEMENT (this "Agreement"), dated and effective as of January 1, 2020 (the "Effective Date"), is made by and between Agrify Corporation, a Nevada corporation ("Agrify"), The Holden Company, Inc., a Delaware limited liability company ("Holden" or "Assignor") and Agrify Brands, LLC (f/k/a TriGrow Brands, LLC), a Nevada limited liability company ("Brands" or "Assignee").

WHEREAS, Holden and Brands entered into that certain Trademark License and Assignment Agreement dated November 14, 2018, whereby Holden granted Brands a sole and exclusive license for use of the Assigned Property (as defined herein) in connection with Brands's products and services (the "Brands License"), and in exchange Holden received a 25% percent membership interest of Brands pursuant to Brand's operating agreement and other valuable consideration;

WHEREAS, Brands has been operating with, marketing and sublicensing additional Intellectual Property (as defined herein) beyond the scope of the Brands License, as better described on Schedule II attached hereto (the "Additional IP"), whereby Brands and Holden have developed joint ownership, rights, title and interest in and to the Additional IP;

WHEREAS, Agrify owns the remaining 75% membership interest in Brands, and Brands now requires additional capital contributions from its two members, Holden and TriGrow Systems, Inc. ("TGS");

WHEREAS, Agrify is the sole shareholder of TGS;

WHEREAS, the parties now desire to enter into this Agreement whereby Holden shall transfer, assign, convey and deliver all of Holden's cumulative rights, title and interest in, to and under any and all Assigned Property (as defined herein), including all goodwill associated therewith, to Brands, free and clear of all liens, and Brands desires to accept the same, and in exchange, Agrify shall contribute additional funds, for and on behalf of TGS and Holden, to Brands for Brands's continued operation as more specifically set forth herein, and pursuant to Brands's operating agreement, at no dilution to Holden's 25% membership interests in Brands.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements, provisions and covenants contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

1.1 "Assigned Property" means the Intellectual Property (as defined in Section 1.2) and the Intellectual Property Rights (as defined in Section 1.3) as better described on Exhibit A of the Brands License and attached hereto as Schedule I, and the Additional IP, as better described on Schedule II attached hereto.

1.2 "Execution Date" The date of the last signature affixed hereto.

1.3 "Intellectual Property" means all intellectual property worldwide, regardless of form, including without limitation: (i) words, names, symbols, devices, designs, and other designations, and combinations of the preceding items, used to identify or distinguish a business, good, group, product, or service or to indicate a form of certification, including without limitation logos, product designs, product features, service marks, trade dress, logos, trade names, corporate names, and other source identifiers (whether or not registered) including all common law rights, all registrations and applications for registration (either filed or in preparation for filing) thereof, all rights therein provided by international treaties or conventions, and all renewals of any of the foregoing (collectively, "Trademarks"), (ii) all copyrightable works and copyrights (whether or not registered), all registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all data and documentation relating thereto, (iii) confidential and proprietary information, trade secrets, know-how (whether patentable or nonpatentable and whether or not reduced to practice), processes and techniques, research and development information including patent and/or copyright searches conducted by Holden and/or any third party, ideas, technical data, designs, drawings and specifications, (iv) domain names, Internet websites or identities used or held for use by Holden that contain any Trademark set forth in Schedule I or Schedule II in whole or part, or otherwise associated with such Trademarks, (v) other proprietary rights relating to any of the foregoing (including without limitation any and all associated goodwill and remedies against infringements thereof and rights of protection of an interest therein under the laws of all jurisdictions), and (vi) copies and tangible embodiments of any of the foregoing.

1.3 "Intellectual Property Rights" means all rights in, arising out of, or associated with the Intellectual Property in any jurisdiction, including without limitation: rights in, arising out of, copyrightable works or associated rights granted under the Copyright Act ("Copyrights"); rights in, arising out of, or associated with Inventions, including without limitation rights granted under the Patent Act ("Patent Rights"); rights in, arising out of, or associated with Trademarks, including without limitation rights granted under the Lanham Act, including all associated goodwill ("Trademark Rights"); rights of attribution and integrity and other moral rights of an author ("Moral Rights"); and rights in, arising out of, or associated with domain names ("Domain Name Rights").

2. Assignment and Transfer. Holden hereby, effective immediately, perpetually, irrevocably, and unconditionally sells, assigns, transfers and conveys to Brands and its successors and assigns all of Holden's cumulative right, title and interest throughout the world in, to and under the Assigned Property (including, without limitation, the Intellectual Property set forth on Schedule I and the Additional IP set forth on Schedule II attached hereto), together with the goodwill of the business symbolized by the Assigned Property, including, without limitation, any registrations that issue from pending applications and any renewals and extensions thereof, and all other corresponding rights that are or may be secured under the laws of the United States or any foreign country, now or hereafter in effect, for Brands's own use and enjoyment, and for the use and enjoyment of Brands's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Holden if this Assignment had not been made, as well as all rights to any actions, causes of action and rights to recover damages and payments for past, present or future infringements or misappropriations thereof. Holden further perpetually, irrevocably, and unconditionally assign, transfer, and convey to Brands and its successors and assigns all claims for past, present and future infringement or misappropriation of the Intellectual Property Rights included in the Assigned Property, including all rights to sue for and to receive and recover all profits and damages accruing from an infringement misappropriation prior to the Effective Date as well as the right to grant releases for past infringements. Holden hereby waives and agrees not to enforce all Moral Rights that Holden may have in the Assigned Property.

3. Consideration - Agrify's Contribution.

a. In exchange for the Assigned Property, Agrify hereby agrees to enter into that certain Amended and Restated Agrify Brands, LLC Operating Agreement dated August 12, 2020, whereby Agrify shall be obligated to provide Brands with continuous financial support in the aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000), so that Brands may continue the operation of its business, which support shall be paid to Brands in equal payments of Twenty Thousand Eight Hundred Thirty-Three Dollars ($20,833) on the first of each month for a period of twelve (12) months following the Execution Date with the payment for the twelfth month being Twenty Thousand Eight Hundred Thirty-Seven Dollars ($20,837), with the exception that if prior to the end of the aforementioned twelve month payment period, Brands reports profitability, then Agrify's obligations for said monthly payment shall cease and the parties agree that at such point Agrify will have fulfilled its obligations described in this Section 3(a) with no further payments required (the "Agrify Contribution"). Notwithstanding anything to the contrary herein and for the avoidance of doubt, Agrify's receipt of the right, title and interest in, to and under the Assigned Property, as outlined in Section 2 above, shall be immediate as of the Effective Date of this Agreement, and shall not be contingent on, conditionally require the occurrence or completion of, or otherwise depend on the Agrify Contribution.

b. Agrify acknowledges and hereby agrees that any financial support provided to Brands in connection with the Agrify Contribution, during the twelve (12) months following the Execution Date of this Agreement (the "Financial Support Period") shall not increase Agrify's or TGS's membership interest in Brands, nor shall the Agrify Contribution dilute Holden's membership interests in Brands. The parties agree, however, that any financial support required by Brands after the Financial Support Period shall be contributed to Brands by Agrify, on behalf of TGS, and Holden jointly in proportion to their respective membership interests in Brands pursuant to the then-current Brands operating agreement, and if either Agrify or Holden fails to contribute its proportionate amount of the required financial support, that non-contributing member's membership interest in Brands shall be subject to dilution.

c. For the avoidance of doubt, no membership units shall be issued to Agrify or TGS pursuant to the Agrify Contribution, and TGS and Holden shall remain at 75% and 25% membership interests, respectively, upon completion of the Agrify Contribution.

d. Agrify further agrees to pay Holden's reasonable attorneys' fees, costs and expenses in connection with this Agreement and the transactions contemplated herein, up to $5,000 in the aggregate, upon Agrify's receipt, review, and approval, which shall not unreasonably be withheld, from Holden of a detailed invoice from a legal services provider.

4. Recordation. Each of Brands and Holden hereby authorize and requests the U.S. Patent and Trademark Office, and the corresponding entities or agencies in any applicable foreign countries or domestic states, to record Brands as the assignee, transferee, and owner of the Assigned Property, and to issue all corresponding registrations to the Brands, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

5. Further Assurances. Holden will take all action and execute all documents as Agrify or Brands may reasonably request to effectuate the transfer of the Assigned Property and the vesting of complete and exclusive ownership of the Assigned Property in Brands. In addition, Holden will, at the request and sole cost and expense of Agrify, but without additional compensation, promptly sign, execute, make, and do all such deeds, documents, acts, and things as Agrify or Brands may reasonably require:

a. to apply for, obtain, register, maintain and vest in the name of Brands alone Intellectual Property Rights protection relating to any or all of the Assigned Property in any country throughout the world, and when so obtained or vested, to renew and restore the same;

b. to defend any judicial, opposition, or other proceedings in respect of such applications and any judicial, opposition, or other proceedings or petitions or applications for revocation of such Intellectual Property Rights; and

c. to assist Brands with the defense and enforcement of its rights in any registrations issuing from such applications and in all Intellectual Property Rights protection in the Intellectual Property.

6. Power of Attorney. If at any time Agrify or Brands is unable, for any reason, to secure Holden's signatures on any letters patent, copyright, or trademark assignments or applications for registrations, or other documents or filings pertaining to any or all of the Assigned Property, whether because of Holden's unwillingness, or for any other reason whatsoever, Holden hereby irrevocably designates and appoints Agrify and its duly authorized officers and agents as the agents and attorneys-in-fact of Holden to act for and on Holden's behalf and stead to execute and file any and all such applications, registrations, and other documents and to do all other lawfully permitted acts to further the prosecution thereon with the same legal force and effect as if executed individually by Holden.

7. Injunctive Relief. A breach of this Agreement may result in irreparable harm to Agrify and a remedy at law for any such breach will be inadequate, and in recognition thereof, Agrify will be entitled to injunctive and other equitable relief to prevent any breach or the threat of any breach of this Agreement by either of Holden without showing or proving actual damages.

8. Binding on Successors. This Agreement will inure to the benefit of, and be binding upon, the parties, together with their respective representatives, successors, and assigns, except that Holden may not assign this Agreement without the consent of Agrify. Agrify may assign this Agreement in its sole discretion.

9. Governing Law; Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be within 25 miles of Burlington, Massachusetts. The arbitration shall be governed by the laws of the State of Nevada. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. In making determinations regarding the scope of exchange of electronic information, the arbitrator(s) and the parties agree to be guided by The Sedona Principles, Third Edition: best practices, recommendations & principles for addressing electronic document production. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The prevailing party shall be entitled to an award of reasonable attorney fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the parties.

10. Amendment and Waiver. This Agreement may not be amended or modified unless mutually agreed upon in writing by the parties and no waiver will be effective unless signed by the party from whom such waiver is sought. The waiver by any party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach. The failure of any party to insist upon the strict performance of the terms, conditions and provisions of this Agreement shall not be a waiver of future compliance or a waiver of any other provisions hereof.

11. Notice. Any notice or communication required or permitted to be sent hereunder shall be duly made and shall be valid and effective if in writing and sent by certified or registered mail, postage prepaid, electronic mail or facsimile transmission or if hand delivered:

a. If to Agrify:	Agrify Corporation 101 Middlesex Turnpike, Suite 6, PMB 326, Burlington, MA 01803 Attention: Legal Department With a copy to: Legal@agrify.com
b. If to Holden:	The Holden Company, Inc. [ ] Attention: [ ]

c. If to Brands: Agrify Brands, LLC
101 Middlesex Turnpike,
Suite 6, PMB 326,
Burlington, MA 01803
Attention: Legal Department

12. Severability. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity, operation or enforcement of any other provision, and the invalid provision will be deemed severed from this Agreement.

13. Entire Agreement. This Agreement is the entire agreement concerning the subject matter hereof. It supersedes all prior and contemporaneous agreements, assurances, representations, and communications between the parties.

14. Miscellaneous.

a. This agreement may be executed in one or more counterparts, each of which shall be considered an original.

b. Nothing contained herein shall be construed to place the parties in the relationship of agents, partners or joint venturers.

c. Whenever the context so requires, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "party" as used generally shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate, or any other entity.

d. Unless expressly stated to the contrary elsewhere in this Agreement, all rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and not restrictive of those given by law.

e. The headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

f. A reference to "sell" or "purchase" or "transfer" includes a reference to procure the sale of or procure the purchase of or procure the transfer of, as the case may be.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has duly executed this Agreement as of the Execution Date.

HOLDEN:

THE HOLDEN COMPANY, INC.

By: /s/ Trek Manzoni
Name: Trek Manzoni
Title: CEO

AGRIFY:

AGRIFY CORPORATION

By: /s/ Raymond Chang
Name: Raymond Chang
Title: Chief Executive Officer

BRANDS:

AGRIFY BRANDS, LLC

By: /s/ Trek Manzoni
Name: Trek Manzoni
Title: Manager

and

By: /s/ Niv Krikov
Name: Agrify Corporation, as Manager
By: Niv Krikov, CFO

[Signature Page to IP Assignment and Transfer Agreement]

SCHEDULE I

State of Washington and Worldwide Common Law trademarks for Cannabis Products

Mark/Design

WESTERN CULTURED
LIGHT UP THE MOMENT
SEATOWN LEMON HAZE
CASCADE CONNIE
JURASSIC 0KG
PERMAFROST
DUTCH TREAT
ISLAND BREEZE
PENNY WISER
KRAKEN BLACK PEPPER
9LBHAMMER
TASTE THE TERPENES
HIGH TERPENE EXTRACT
TASTES LIKE IT'S STRAIGHT FROM THE GARDEN
SUPERIOR TERPS
SUPERIOR TERPENES
TERPENE EDUCATION, THE FLAVOR AND AROMA OF CANNABIS

DAWGSTAR
DAWG STAR PREMIUM HAND GROWN CANNBIS SEATTLE, WA
DAWG STAR QUALITY HAND GROWN PREMIUM CANNBIS ESTABLISHED 2011
GIFT FROM THE GODS
TASTE THE DIFFERENCE
SEATTLE' S FIRST LICENSED AND PERMITTED GROW FACILITY
TERP SAUCE
CINDARELLA'S DREAM
A CREATIVE SATIVA
AN UPLIFTING HYBRID
A RELAXING INDICA
QUALITY, HANDGROWN, PREMIUM CANNABIS

Stylized Marks (no claim to color)

State of Washington Registrations
For natural agricultural products, and transportation and storage services
WA Reg. No. 58162: WESTERN CULTURED
bWA Reg. No. 58521: LIGHT UP THE MOMENT
For smoker's articles, staple foods
WA Reg. No. 60174: DAWG STAR (design)
WA Reg. No. 60175: DAWG STAR

SCHEDULE II

Additional IP

A. Marks / Stylized Marks:

Holden's worldwide common law rights in the following marks and Intellectual Property, including the Intellectual Property Rights thereto, and any registrations filed thereon.

1. Twisted Legion

[Page 1 of Schedule II to the IP Assignment and Transfer Agreement]

2. Waxtronaut

B. Products

Products means cannabis products produced in one or more of state license facility or facilities.
Below is a list of assigned strains.

Mr Nice
Purple Punch AKA Spiked Punch
Citrus Pez
Banana Bicycle
Seatown Lemon Haze
Bay Pie
Banana Split
Kraken
Orange Rind AKA orange peel
Bahama Mama
San Juan Berry
GG4
Blueberry Cheesecake
LSD
Fruit Loops OG
Purple Cheddar
Connie Chung (aka Cascade Connie)
Crème de Menthe
Pineapple Purps
Lemon Diesel Sour
Sakura

Exhibit 10.18

AMENDED AND RESTATED

OPERATING AGREEMENT

OF

AGRIFY BRANDS, LLC

A NEVADA LIMITED LIABILITY COMPANY

EFFECTIVE AS OF AUGUST 12, 2020

THE INTERESTS DESCRIBED AND REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS (THE "SECURITIES LAWS") AND MAY BE RESTRICTED SECURITIES AS THAT TERM IS DEFINED IN RULE 144 UNDER THE SECURITIES LAWS. TO THE EXTENT THE INTERESTS CONSTITUTE SECURITIES UNDER THE SECURITIES LAWS, THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR QUALIFICATION UNDER THE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES LAWS, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY.

This Amended and Restated Operating Agreement (this "Agreement") of Agrify Brands, LLC (the "Company") is made and entered into as of the 12th day of August, 2020 (the "Effective Date") by and among the Company and each of the members as shown on Exhibit A attached hereto (the "Members").

WHEREAS, the Company was formed under the Nevada Limited Liability Company Act, (NRS. § 86.011, et seq.) (as amended from time to time, the "Act") pursuant to the Articles of Organization of the Company, which was filed with the Secretary of State of the State of Nevada on November 14, 2018 under the name "TriGrow Brands, LLC";

WHEREAS, the Members entered into a limited liability operating agreement of the Company, dated as of November 18, 2018 (the "Original Agreement");

WHEREAS, on February 4, 2020, Certificate of Amendment to Articles of Organization form was filed with the Secretary of State of the State of Nevada pursuant to which the name of the Company was changed to "Agrify Brands, LLC" (the "Name Change");

WHEREAS, the Members wish to amend and restate the Original Agreement and to enter into this Agreement to record and reflect the Name Change and to set forth a binding agreement as to the affairs of the Company, the conduct of its business and the rights, ownership interest and obligations of the Members.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Members and the Company (and each person or entity who subsequently becomes a Member) hereby agree as follows:

ARTICLE 1.
DEFINITIONS

Unless the context otherwise specifies or requires, capitalized terms used herein which are not otherwise defined in the text of this Agreement shall have the respective meanings assigned thereto in Addendum I, attached hereto and incorporated herein by reference, for all purposes of this Agreement (such definitions to be equally applicable to both the singular and the plural forms of the terms defined). Unless otherwise specified, all references herein to Articles or Sections are to Articles or Sections of this Agreement.

ARTICLE 2.
FORMATION OF COMPANY

2.1 Formation; Agreement. The Company was formed under the laws of the State of Nevada by the filing of Articles of Organization with the Secretary of State of the State of Nevada on November 14, 2018. This Agreement shall constitute the "operating agreement" or "limited liability company agreement" (as that term is used in the Act) of the Company. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Act in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 Name. The name of the Company is AGRIFY BRANDS, LLC.

2.3 Principal Office. The principal office of the Company shall be determined by the Board of Managers (the "Board"). The Company may locate its places of business at any other place or places as the Board may from time to time deem advisable.

2.4 Registered Agent. The registered office of the Company shall be the office of the initial registered agent named in the Articles of Organization or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by the Act and applicable law.

2.5 Term. The Company shall continue in existence until it dissolves in accordance with the provisions of this Agreement and the Act.

2.6 No State-Law Partnership. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this agreement, for any purposes other than as set forth in the immediately following sentence, and neither this Agreement nor any document entered into by the Company or any Member shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state or local income tax purposes, and the Company and each Member shall file all tax and information returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

2.7 Nature of Members' Interests. The interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company. Neither any Member nor a successor, representative or assign of such Member, shall have any right, title or interest in or to any Property owned by the Company or the right to partition any Property owned by the Company.

ARTICLE 3.
BUSINESS OF COMPANY

The purpose of the Company is to carry on any activity that may be lawfully carried on by a limited liability company organized under the Act. The Company will have all the powers granted to a limited-liability company under the laws of the State of Nevada, including as further set forth herein and in the Company's Articles.

ARTICLE 4.
MEMBERS AND UNITS

4.1 Units Generally. The Membership Interests of the Members shall be represented by issued and outstanding Units, which may be divided into one or more types, classes or series. Each type, class or series of Units shall have the privileges, preference, duties, liabilities, obligations and rights, including voting rights, if any, set forth in this Agreement. The Board shall maintain the "Members' Schedule" of all Members, their respective addresses and the amount and series of Units held by them, and shall update the Members' Schedule upon the issuance or Transfer of any Units to any new or existing Member. A copy of the Members Schedule as of the execution of this Agreement is attached hereto as Exhibit A, which shall be updated from time-to-time. The number of Units authorized for issuance by the Company shall be One Million (1,000,000), which may be allocated between Units and Incentive Units (defined below) in the Board's discretion. The Board may, in its discretion, authorize for issuance additional Units, including additional Units in any class or series that it may determine.

4.2 Profits Interests. The Company, acting through the Board, is hereby authorized to issue incentive Units ("Incentive Units") to managers, officers, employees, consultants or other service providers of the Company or any Company subsidiary (collectively, "Service Providers"). Prior to the issuance of Incentive Units, the Company shall adopt a written plan pursuant to which all Incentive Units shall be granted in compliance with Rule 701 of the Securities Act or another applicable exemption (such plan as in effect from time to time, the "Incentive Plan"). In connection with the adoption of the Incentive Plan and issuance of Incentive Units, the Board shall negotiate and enter into award agreements with each Service Provider to whom it grants Incentive Units (such agreements, "Award Agreements"). Each Award Agreement shall include such terms, conditions, rights and obligations as may be determined by the Board, in their sole discretion, consistent with the terms herein. The Board shall establish such vesting criteria for the Incentive Units as it determines in its discretion and shall include such vesting criteria in the Incentive Plan and/or the applicable Award Agreement for any grant of Incentive Units. Service Providers who receive Incentive Units hereunder shall also be referred to herein as "Service Provider Members" and shall specifically be denoted as such on Exhibit A. As of the date of each grant of Incentive Units, the Board shall establish a "Hurdle Value" with respect to each such Incentive Unit granted on such date. The Hurdle Value with respect to an Incentive Unit shall be equal to or greater than the amount that would be distributed with respect to all Units pursuant to in a hypothetical transaction in which the Company sold all of its assets for fair market value and distributed the proceeds therefrom in liquidation of the Company. The Hurdle Value shall be adjusted by the Board to take into account future contributions, distributions, combinations and restructurings as appropriate for the Hurdle Amount to function consistently with the definition of "profits interest."

4.2.1 The Company and each Member hereby acknowledge and agree that, with respect to any Service Provider, such Service Provider's Incentive Units constitute a "profits interest" in the Company within the meaning of Internal Revenue Service ("IRS") Revenue Procedures 93-27 and 2001-43, and that any and all Incentive Units received by a Service Provider are received in exchange for the provision of services by the Service Provider to or for the benefit of the Company in a Service Provider capacity or in anticipation of becoming a Service Provider. The Company and each Service Provider who receives Incentive Units hereby agree to comply with the provisions of IRS Revenue Procedures 93-27 and 2001-43, or any future IRS guidance or other governmental authority that supplements or supersedes the foregoing Revenue Procedures.

4.2.2 Incentive Units shall receive the following treatment:

(i) the Company and each Service Provider who receives Incentive Units shall treat such Service Provider as the owner of such Incentive Units from the date of their receipt, and the Service Provider receiving such Incentive Units shall take into account his allocable share of Net Income, Net Loss, income, gain, loss, deduction and credit associated with the Incentive Units in computing such Service Provider's income tax liability for the entire period during which such Service Provider holds the Incentive Units.

(ii) each Service Provider that receives Incentive Units that are subject to a substantial risk of forfeiture ("Restricted Incentive Units") shall make a timely and effective election under Code Section 83(b) with respect to such Incentive Units and shall promptly provide a copy to the Company. Except as otherwise determined by the Board, both the Company and all Members shall (A) treat such Incentive Units as outstanding for tax purposes, (B) treat such Service Provider as a partner for tax purposes with respect to such Incentive Units, and (C) file all tax returns and reports consistently with the foregoing. Except as otherwise determined by the Board so as to comply with applicable law, neither the Company nor any of its Members shall deduct any amount (as wages, compensation or otherwise) with respect to the receipt of such Incentive Units for federal income tax purposes.

(iii) in accordance with the finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and IRS Notice 2005-43, each Member, by executing this Agreement, authorizes the Company to elect a safe harbor under which the fair market value of any Incentive Units issued after the effective date of such Proposed Regulations (or other guidance) will be treated as equal to the liquidation value (within the meaning of the Proposed Regulations or successor rules) of the Incentive Units as of the date of issuance of such Incentive Units. In the event that the Company makes a safe harbor election as described in the preceding sentence, each Member hereby agrees to comply with all safe harbor requirements with respect to Transfers of Units while the safe harbor election remains effective.

(iv) For the avoidance of doubt, the Incentive Units shall be voting Units and shall entitle the holders thereof to vote on any matters required or permitted to be voted on by the Members.

4.3 Certification of Units. The Board in its sole discretion may, but shall not be required to, issue certificates to the Members representing the Units held by such Member.

ARTICLE 5.
Rights and Duties of Board of Managers; Indemnification; Officers

5.1 Management. The business and affairs of the Company shall be managed by the Board of Managers (the "Board", and each of the members of the Board may be referred to herein, individually, as a "Manager" and, collectively, as the "Managers"). Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waivable provisions of applicable law, the Board shall have the exclusive, full and complete authority, power, and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts and activities customary or incident to the management of the Company or the Company's business. The Board may take any action permitted to be taken by the Board with the approval of a Majority of the Managers on the Board, or as otherwise determined from time-to-time by resolution of the Board. Approvals may be by action at a meeting or by written consent, provided the requisite vote is obtained. To the extent that there is a deadlock on any issue, action or decision to be taken by the Board, notwithstanding anything to the contrary contained herein, such issue, action or decision shall be decided by the approval of a Super-Majority Interest of the Members. For purposes of this Agreement, a deadlock shall be defined as a situation in which there is an even number of Managers on the Board, and an equal number of Managers vote for and against such issue, action or decision. Unless authorized to do so by this Agreement or by the Board, no Member (in its capacity as such), attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.2 Number, Tenure and Qualifications. The number of Managers on the Board shall be fixed from time to time by the approval of the Members holding at least a Majority Interest, but in no instance shall there be less than one (1) Manager on the Board. The Members hereby set the number of Managers at two (2). Each Manager shall hold office until such Manager resigns pursuant to Section 5.9 or is removed pursuant to Section 5.10. Trigrow Systems, Inc., or its successor or assign, shall have the right to appoint one (1) Manager (the "Trigrow Manager") as long as Trigrow Systems, Inc. owns at least five percent (5%) of the Units in the Company, and The Holden Company, Inc., or its successor or assign, shall have the right to appoint one (1) Manager (the "Holden Manager") as long as The Holden Company, Inc. owns at least five percent (5%) of the Units in the Company. The name of the current Managers are as follows:

Agrify Corporation	(the Trigrow Manager)
Trek Manzoni	(the Holden Manager)

The Board, in its sole discretion, may determine to invite a representative of a Member to attend meetings of the Board in a non-voting observer capacity on such terms and conditions as may be determined by the Board. Notwithstanding anything in this Section 5.2 to the contrary, for so long as the Board includes either or both of a Trigrow Manager or a Holden Manager, the number of Managers on the Board may not be increased without the approval of each such Manager or Managers, subject to Section 5.1.

5.3 Certain Powers of the Board. Without limiting the generality of Section 5.1, but subject to Section 5.2 and Section 5.4, the Board shall have power and authority, on behalf of the Company, to:

(a) Subject to Section 5.4(b), borrow money for the Company from banks, other lending institutions, the Managers, Members, or Affiliates of the Managers or Members on such terms as the Board deems appropriate;

(b) Purchase liability and other insurance to protect the Company's property and business;

(c) Execute and deliver all instruments and documents, including checks, drafts, notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage, or disposition of Company property; assignments; bills of sale; leases; partnership agreements; operating (or limited liability company) agreements of other limited liability companies; and any other instruments or documents necessary, in the reasonable opinion of the Board, to the conduct of the business of the Company, including modifications and amendments thereto;

(d) Employ accountants, legal counsel, managing agents, other experts, employees and independent contractors to perform services for the Company and to compensate them from Company funds;

(e) Subject to Section 5.4(e), file any amendments to the Company's Articles with the Nevada Secretary of State;

(f) Execute and file such other instruments, documents, and certificates which may from time to time be required by the laws of Nevada or any other jurisdiction in which the Company shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue, and defend the valid existence of the Company;

(g) Authorize and issue additional Units, to either new or existing Members;

(h) Issue Incentive Units or Unit Equivalents to service providers;

(i) Form a Company subsidiary;

(j) Enter into or modify any employment, severance, equity rights, change in control, termination or similar agreements or arrangements with, or grant any bonuses, salary increases, severance or termination pay to, or otherwise increase the compensation or benefits of, any officer, manager, member, managing member, consultant or employee;

(k) Lend money to or guaranty or become surety for the obligations of any Person;

(l) Compromise or settle any claim against or inuring to the benefit of the Company involving an amount in controversy; and

(m) Open bank accounts in the name of the Company and to be the signatory thereof.

5.4 Limitations on Authority. Notwithstanding any other provision of this Agreement, the Board shall not cause or commit the Company to do any of the following without the approval of a Super-Majority Interest of the Members:

(a) Enter into or cause the Company to be a party to a Capital Event;

(b) In connection with the borrowing of money, to Hypothecate Company Property to secure repayment of the borrowed sums;

(c) Cause the Company to file for Bankruptcy;

(d) Sell, transfer, assign, or otherwise dispose of all or substantially all of the Company's assets;

(e) Amend, restate, modify or otherwise change the Company's Articles of Organization;

(f) Agree to indemnify any Person;

(g) Take any action to liquidate or dissolve the Company, as further provided in Section 12.1;

(h) Take any action resulting in the Company being treated as other than a partnership for federal tax purposes;

(i) Commingle the Company's funds with those of any other Person; or

(j) Agree in writing or otherwise to do anything enumerated by this Section.

5.5 Liability for Certain Acts.

5.5.1 The Board does not, in any way, guarantee the return of the Member's Capital Contributions from the operations of the Company or otherwise.

5.5.2 Except as otherwise provided herein, a Manager will not be liable to the Company or the Members or other interest holders for any act or omission in connection with the business or affairs of the Company so long as the Manager against whom liability is asserted acted in good faith on behalf of the Company and in a manner reasonably believed by that Manager to be within the scope of authority under this Agreement and in the best interests of the Company, unless such act or omission constitutes gross negligence, intentional misconduct, fraud or a knowing violation of law.

5.6 Managers and Members Have No Exclusive Duty to Company. Neither the Company nor any Member or Manager shall have any right, by virtue of this Agreement, to share or participate in any other investments or activities of any other Member or Manager. The Managers and Members shall have no exclusive duty to act on behalf of the Company. Subject to Section 5.7 below, each Manager and Member may have other business interests and may engage in other activities in addition to those relating to the Company.

5.7 Reserved.

5.8 Indemnification.

5.8.1 Proceeding Other Than By the Company. The Company may indemnify any Manager or Member or any other person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that such Person is or was a Member, Manager, employee or agent of this Company, or is or was serving at the request of this Company as manager, director, officer, employee or agent of another limited-liability company or corporation, against expenses, including attorneys' fees, judgment, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with the action, suit or proceeding if such Person acted in good faith and in a manner which he, she or it reasonably believed to be in or not opposed to the best interests of this Company, and, with respect to a criminal action or proceeding, had no reasonable cause to believe his, her or its conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the Person did not act in good faith and in a manner which he, she or it reasonably believed to be in or not opposed to the best interest of this Company, and that, with respect to any criminal action or proceeding, he, she or it had reasonable cause to believe that such Person's conduct was unlawful.

5.8.2 Proceeding by the Company. The Company may indemnify any Manager or Member or any other person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of this Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager, employee or agent of this Company, or is or was serving at the request of this Company as a Member, Manager, director, officer, employee or agent of another limited-liability company, corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by such Person in connection with the defense or settlement of the actions or suit if such Person acted in good faith and in a manner which he, she or it reasonably believed to be in or not opposed to the best interests of this Company. Indemnification may not be made for any claim, issue or matter as to which such a Person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to this Company or for amounts paid in settlement to this Company, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the Person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

5.8.3 Indemnity if Successful. To the extent that a Member, Manager, employee, agent of the Company, or other indemnified party, has been successful on the merits or otherwise in defense of any action, suit or proceeding described in this Section 5.8, or in defense of any claim, issue or matter therein, the Company will indemnify such party against expenses, including attorneys' fees, actually and reasonably incurred in connection with the defense.

5.8.4 Expenses. Any indemnification under this Section 5.8, unless ordered by a court or advanced by the Company, must be made by this Company only as authorized in the specific case upon a determination that indemnification of the Member, Manager, employee, agent or other indemnified party is proper in the circumstances.

5.9 Resignation. A Manager may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy due to this Section shall be filled by the appointing Member, or as otherwise as provided in Section 5.2 above. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Manager as a Member.

5.10 Removal. A Manager may be removed at any time by its appointing Member, with or without cause, or may be removed by a Majority Interest with cause. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of the Manager as a Member. Any vacancy due to this Section shall be filled by the appointing Member, or as otherwise as provided in Section 5.2 above. For purposes of this Section, "with cause" shall mean: (i) the failure of the Manager to substantially comply with any material provision of this Agreement in any material respect, provided such breach is not cured within thirty (30) days after written notice; (ii) the performance of any act or any omission by the Manager which constitutes, or occurs as the result of, willful misconduct, fraud or the gross negligence of Manager; (iii) Manager's unauthorized disclosure of Confidential Information of the Company; or (iv) the conviction of or plea of guilty or nolo contendere by the Manager of a felony, or any act by the Manager which constitutes an embezzlement, willful destruction or theft (whether or not related to the Manager's duties or employment with the Company), misappropriation of Company property or willful commission of an act materially injurious to the Company's business or reputation.

5.11 Vacancies. Any vacancy occurring for any reason on the Board, including by reason of Section 5.9 or 5.10 above, shall be filled by the appointing Member, consistent with the provisions of Section 5.2 above.

5.12 Compensation, Reimbursement of Expenses. The Managers are entitled to reasonable compensation from the Company for services rendered to the Company in their capacity as such. Upon the submission of appropriate documentation, the Managers shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred on behalf, or at the request, of the Company.

5.13 Officers. The Company may have such officers (the "Officers") as shall be determined by the Board. All Officers shall be appointed by the Board and may be removed at any time by the Board, with or without cause, subject to the terms of any employment agreements then in effect. The Officers, subject to Board supervision, shall be responsible for making the routine decisions with respect to the ordinary business of the Company. In the event the Board appoints a person to a particular office, such person shall have the powers and authority as prescribed below and such other power and authority as may be prescribed by the Board in writing from time to time.

5.14 Insurance. The Board shall have the power to purchase and maintain or cause the Company to purchase and maintain insurance, including, without limitation, insurance on behalf of the Managers and Officers against any liability asserted against them or incurred by them in such capacity or capacities or arising out of their status as such, and for fire, other casualty, business interruption, general liability, worker's compensation, automobile, and such other insurance in such amounts, and with such terms, as may be determined by the Board in their reasonable discretion.

ARTICLE 6.
Rights and Obligations of Members; Representations of Members

6.1 Limitation of Liability. Except as otherwise provided by this Agreement and the provisions of the Act, no Member shall be liable for an obligation of the Company solely by reason of being a Member.

6.2 Members Have No Agency Authority. The Members shall have the power to exercise any and all rights or powers granted to Members pursuant to the express terms of this Agreement and the Act. Except as otherwise specifically provided by this Agreement or required by the Act, no Member, in its capacity as a Member, shall have the power to act for or on behalf of, or to bind, the Company.

6.3 Priority and Return of Capital. Except as may be expressly provided in this Agreement, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or Distributions; provided, however, that this Section 6.3 shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

6.4 No Withdrawal. A Member shall not cease to be a Member as a result of the Bankruptcy of such Member or as a result of any other events specified in the Act. So long as a Member continues to hold any Units, such Member shall not have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. Notwithstanding the above, the Units of any Member who files Bankruptcy shall be subject to optional repurchase pursuant to Section 10.5 below.

6.5 Application of this Agreement. As soon as any Person who is a Member ceases to hold any Units, such Person shall no longer be a Member; provided, however, that this Agreement shall continue to apply with respect to any Units that have been repurchased in accordance with Article 10 until full payment is made therefor in accordance with the terms of this Agreement.

6.6 Death. The death of any Member shall not cause the dissolution of the Company. In such event the Company and its business shall be continued by the remaining Member or Members and the Units owned by the deceased Member shall automatically be transferred to such Member's heirs; provided, that within a reasonable time after such transfer, the applicable heirs shall sign a written undertaking substantially in the form of the Joinder Agreement, attached hereto. Notwithstanding the above, the Units of a deceased Member shall be subject to optional repurchase pursuant to Section 10.5 below.

6.7 No Interest in Company Property. No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

6.8 Representations and Warranties of Members. By execution and delivery of this Agreement or a Joinder Agreement, as applicable, each of the Members (or new Members, as the case may be), represents and warrants to the Company and acknowledges that:

(a) The Units have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a public offering and cannot be disposed of unless (i) they are subsequently registered or exempted from registration under the Securities Act and (ii) the provisions of this Agreement have been complied with;

(b) Such Member will not take any action that could have an adverse effect on the availability of the exemption from registration provided by Rule 501 promulgated under the Securities Act with respect to the offer and sale of the Units;

(c) Such Member's Units are being acquired for its own account solely for investment and not with a view to resale or distribution thereof;

(d) Such Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company subsidiaries and such Member acknowledges that it has been provided adequate access to the personnel, properties, premises and records of the Company and the Company subsidiaries for such purpose;

(e) The determination of such Member to acquire Units has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company subsidiaries that may have been made or given by any other Member or by any agent or employee of any other Member;

(f) Such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and making an informed decision with respect thereto;

(g) Such Member is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time;

(h) The execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default in any material respect under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound;

(i) This Agreement is valid, binding and enforceable against such Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity); and

(j) Neither the issuance of any Units to any Member nor any provision contained herein will entitle the Member to remain in the employment of the Company or any Company subsidiary or affect the right of the Company or any Company subsidiary to terminate the Member's employment at any time for any reason, other than as otherwise provided in such Member's employment agreement or other similar agreement with the Company or Company subsidiary, if applicable.

None of the foregoing shall replace, diminish or otherwise adversely affect any Member's representations and warranties made by it in any Unit purchase agreement or Award Agreement, as applicable.

ARTICLE 7.
ACTIONS OF MEMBERS

7.1 Member Approval. Unless otherwise required in this Agreement, approvals of the Members may be communicated in writing by a written consent, which may be executed in separate counterparts and delivered by Electronic Transmission, and no action need be taken at a formal meeting. As to any matter requiring the approval of the Members where a threshold of Membership Units is not specified herein or required by the Act, the Articles or this Agreement, a Majority Interest of Units shall be required.

7.2 No Required Meetings. The Members may, but shall not be required to, hold any annual, periodic, or other formal meetings. Meetings of the Members may be called by any Manager or by any Member or Members holding at least Twenty percent (20%) of the Units. Only Members who hold the relevant Units shall have the right to attend meetings of the Members.

7.3 Place of Meetings. The Member(s) or Manager calling such meeting may designate the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company.

7.4 Notice of Meetings. Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than 50 days before the date of the meeting, either personally, by mail, by Electronic Transmission by or at the direction of the Board or the Member or Members calling the meeting, to each Member entitled to vote at such meeting.

7.5 Meeting of all Members. All meetings shall be held at the place and time designated in the Notice of the meeting; provided, however, that if all of the Members shall meet at any time and place, and approve the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.6 Proxies. At all meetings of Members, a Member who is qualified to vote may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Board before or at the time of the meeting.

7.7 Telephonic Participation. Any Member may participate in any meeting of the Members by means of a telephone conference or similar method of communication by which all persons participating in the meeting can hear one another. Participation in such meeting shall constitute presence in person at the meeting.

7.8 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.9 Action Without Meeting. Notwithstanding the provisions of this Section 7, any matter that is to be voted on, consented to or approved by the Members entitled to vote may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than a Majority Interest, or such higher interest as otherwise required by this Agreement, the Act or applicable law. A record shall be maintained by the Board of each such action taken by written consent of a Member or Members.

ARTICLE 8.
CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 Members' Initial Capital Contributions, Commitment. Each of the Members shall be deemed for all purposes hereunder as having made an "Initial Capital Contribution" of such amount shall be set forth next to its name on Exhibit "A," attached hereto and incorporated by this reference herein; provided, however, that for the Trigrow Member, to the extent that less than all of its Initial Capital Contribution is contributed on or around the date of this Agreement, the remaining amount shall be its "Commitment" and the Trigrow Member has fully contributed such portion of its Commitment to the Company.

8.2 No Additional Contributions. No Member shall be obligated to contribute additional capital to the Company over and above the Initial Capital Contribution required pursuant to Section 8.1 above, but, to the extent the Board determines that additional Capital Contributions are necessary or appropriate in connection with the conduct of the Company's business (including expansion or diversification), the Members may be permitted to make additional Capital Contributions if they so desire. In such event, the Members shall have the opportunity (but not the obligation) to participate in such additional Capital Contributions on pro rata terms. If a Member chooses not to make additional capital contributions, as may be determined by the Managers (a "Non-Contributing Member"), the Membership Interests of all the Members shall be adjusted as follows: (i) the Non-Contributing Member's Membership Interest shall be reduced so that it is equal to the result (expressed as a percentage) obtained by dividing (A) the product of the Non-Contributing Member's Membership Interest multiplied by the total Capital Contributions made by all Members (not including the subject additional capital contribution), by (B) the sum of the total Capital Contributions made by all Members (not including the subject additional capital contribution) plus the total of the subject additional capital contributions, and (ii) the other contributing Members' Membership Interest shall be increased, pro rata, by the amount of the reduction in the Non-Contributing Member's Membership Interest. For example, if the total capital contributions, before any additional capital contributions, were equal to $100,000, and if the additional capital contributions were equal to $25,000, and if there is one Contributing Member and one Non-Contributing Member, a Non-Contributing Member with a 20% Membership Interest would have his Membership Interest reduced to sixteen percent (16%) ($20,000/$125,000), and the Contributing Member would have his Membership Interest increased from 80% to 84%.

8.3 Sole Benefit. It is expressly acknowledged and agreed that the provisions of this Agreement relating to the rights and obligations of the Members to make any Initial Capital Contribution or to make loans or other reimbursements are for the sole benefit of the Members (or their designated Affiliates) and may not be exercised on behalf of the Members or invoked or enforced for any other purpose by any other Person (other than a designated Affiliate), including by any lender or any trustee in a bankruptcy proceeding.

8.4 Capital Accounts.

(a) A separate Capital Account shall be maintained for each Member. Each Member's Capital Account shall be increased by (i) the amount of money contributed by such Member to the Company; (ii) the Gross Asset Value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to such Member of Net Profits (or items of gross income or gain); and (iv) any items in the nature of income and gain which are specially allocated to the Member pursuant to Section 9.2. Each Member's Capital Account shall be decreased by (1) the amount of money Distributed to such Member by the Company; (2) the Gross Asset Value of property Distributed to such Member by the Company (net of liabilities secured by such Distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); (3) any items in the nature of deduction and loss that are specially allocated to the Member pursuant to Section 9.2; and (4) allocations to such Member of Net Losses (or items of gross deduction or loss).

(b) Without limiting the other rights and duties of a transferee of a Membership Unit pursuant to this Agreement, in the event of a permitted sale or exchange of a Membership Unit in the Company, (i) the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Unit in accordance with Section 1.704-1(b)(2)(iv) of the Regulations, and (ii) the transferee shall be treated as the transferor for purposes of allocations and distributions pursuant to Article 9 to the extent that such allocations and distributions relate to the transferred Membership Unit.

(c) Upon liquidation of the Company, liquidating Distributions shall be made in accordance with Section 12.3 below, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs.

(d) The Board shall also: (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Section 1.704-1(b)(2)(iv)(q) of the Regulations, and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations; provided that, to the extent that any such adjustment is inconsistent with other provisions of this Agreement and would have a material adverse effect on any Member, the Board may not make such adjustment without the consent of such Member.

(e) Except as otherwise provided in this Agreement, whenever it is necessary to determine the Capital Account balance of any Member, the Capital Account balance of such Member shall be determined after giving effect to all allocations previously made pursuant to Article 9 and all contributions and distributions made prior to the time as of which such determination is to be made.

(f) The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. If the Board shall reasonably determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, then the Board may make such modification.

(g) The Company may, at the discretion of the Board, revalue Company property as permitted under Regulations Section 1.704-1(b)(2)(iv)(f). In the event of such a revaluation, the Capital Accounts of the Members shall be adjusted in accordance with Regulations Section 1.704-1(b)(2)(iv)(f), (g) and (s).

(h) In the event that any Member shall have a deficit balance in his, her or its Capital Account, such Member shall have no obligation to the Company or any other Person, during the term of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any contributions to the Company or any other Person by reason thereof, except as may be required by applicable law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

8.5 Withdrawal or Reduction of Members' Contributions to Capital. A Member may not withdraw as a Member at any time. A Member shall not receive a Distribution of any part of its Adjusted Capital Contribution to the extent such Distribution would violate Section 9.4.

8.6 Succession Upon Transfer. In the event that any Units are Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Units, in accordance with the Code and Treasury Regulations.

8.7 Treatment of Loans From Members. Loans by any Member to the Company shall not be considered Capital Contributions and shall not affect the maintenance of such Member's Capital Account, other than to the extent provided in the Code or Treasury Regulations, if applicable.

8.8 Agrify Contribution – IP Transfer Agreement.

8.8.1 Notwithstanding anything to the contrary in this Article 8, pursuant to the terms and conditions of that certain Intellectual Property Assignment and Transfer Agreement by and between The Holden Company, Agrify Corporation, and Company, dated on or around the date hereof (the "IP Transfer Agreement"), Agrify Corporation shall provide Company with continuous financial support in the aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000), so that Company may continue the operation of its business, which support shall be paid to Company in equal payments of Twenty Thousand Eight Hundred Thirty-Three Dollars ($20,833) on the first of each month for a period of twelve (12) months following the date the IP Transfer Agreement is executed with the payment for the twelfth month being Twenty Thousand Eight Hundred Thirty-Seven Dollars ($20,837), with the exception that if prior to the end of the aforementioned twelve month payment period, Brands reports profitability, then Agrify's obligations for said monthly payment shall cease and the parties agree that at such point Agrify will have fulfilled its obligations described in this Section 8.8.1 with no further payments required (the "Agrify Contribution").

8.8.2 The parties acknowledge and hereby agree that any financial support provided to Company in connection with the Agrify Contribution, during the twelve (12) months (or less pending Brands reporting profitability per Section 8.8.1) following the date the IP Transfer Agreement is executed (the "Financial Support Period") shall not increase Agrify Corporation's or TriGrow Systems, Inc.'s membership interest in Company, nor shall the Agrify Contribution dilute The Holden Company, Inc.'s membership interests in Company. The parties agree, however, that any financial support or capital contributions required by Company after the Financial Support Period shall be contributed to Company by Agrify Corporation, on behalf of TriGrow Systems, Inc., and by The Holden Company, Inc. jointly in proportion to their respective membership interests in the Company pursuant to the this Agreement, and if either TriGrow Systems, Inc. or The Holden Company, Inc. fails to contribute its proportionate amount of the required financial support, that non-contributing member's membership interest in Company shall be subject to dilution as described in Section 8.2 of this Agreement.

ARTICLE 9.
ALLOCATIONS, INCOME TAX,
DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 Allocations of Net Profits and Net Losses. Subject to Section 9.2 below, for each Fiscal Year, the Company's Net Profits and Net Losses (or, at the Manager's discretion, items of income, gain, loss, and deduction) shall be allocated among the Members (where for this purpose each restricted Incentive Unit shall be treated as if it were vested in full) in such a manner that, immediately after giving effect to such allocations, each Member's adjusted Target Capital Account balance, equals, as nearly as possible, the amount of cash, if any, that would be distributed to such Member if (i) all the Company's assets were sold for cash equal to their respective book values (as determined under Regulations Section 1.704-(b)(2)(iv)), reduced, but not below zero, by the amount of nonrecourse debt to which such assets are subject, (ii) all the Company's liabilities (other than nonrecourse liabilities) were paid in full, and (iii) all the remaining cash were distributed to the Members under Section 9.3(b).

9.2 Special Allocations to Capital Accounts. Notwithstanding Section 9.1 hereof:

(a) Tax credits, nonrecourse deductions, and other items the allocation of which cannot have economic effect shall be allocated at the discretion of the Board in a manner consistent with the Regulations under Code Section 704(b). Nonrecourse liabilities, including excess nonrecourse liabilities, shall be allocated at the discretion of the Board in a manner consistent with the Regulations under Code Section 704 and 752.

(b) The provisions of Regulation Section 1.704-2(f) and (g), related to "minimum gain chargebacks," Regulation Section 1.704-2(i)(4), related to "partner nonrecourse debt minimum gain chargebacks," Regulation Section 1.704-1(b)(2)(ii)(d), related to "qualified income offsets," Regulation Section 1.704-2(c), related to "nonrecourse deductions," and Regulation Section 1.704-2(i)(2), related to "partner nonrecourse deductions" are hereby incorporated herein by reference and shall be applied to the allocation of income, gain, loss, or deduction in the manner provided in the Regulations. The Company shall make no allocation to a Member so as to cause or increase a deficit balance in such Member's Adjusted Capital Account, and instead shall make such allocation to the remaining Members in accordance with their positive Adjusted Capital Account balance. The Board may, in its reasonable discretion, adjust the subsequent allocations of income, gain, losses, or deduction to prevent distortion of the economic arrangement of the Members, as otherwise described in this Agreement, due to allocations resulting from the preceding terms of this clause (b).

(c) Except as otherwise provided below or as otherwise required by the Code or Regulations, a Member's distributive share of items of income, gain, loss and deduction for income tax purposes shall be the same as is entered in the Member's Capital Account pursuant to this Agreement. In accordance with Code Section 704(c) and the Regulations thereunder, and by such methods (including but not limited to adjustments described in Regulations Section 1.704-3(c)(ii) and (iii)(B)) determined by the Board, allocations of items of income, gain, loss, or deduction for income tax purposes shall take into account any variation between the adjusted tax basis of Company property and the book value of such property as determined for purposes of maintaining Capital Accounts.

(d) If any interests in the Company are newly issued, reserved, transferred, forfeited, or redeemed during a fiscal year, the Board shall adjust allocations of income, gain, loss, deduction, and credit to take account of the varying interests of the Members in any manner consistent with Code Section 706 and the Regulations thereunder.

(e) Adjustment Pursuant to Section 734(b) or 743(b). To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the Regulations, to be taken into account in determining Capital Accounts as the result of a Distribution to an Member in complete liquidation of its Membership Units, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Member to whom such Distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations applies.

(f) Allocations in Respect of Transferred Units and in Respect of a Book-Up Event. In the event of a Transfer of Units during any Fiscal Year made in compliance with this Agreement or an adjustment to Capital Accounts in accordance with paragraph (c) of the definition of "Book Value," Net Profits, Net Losses and other items of income, gain, loss, deduction and credit of the Company attributable to such Units for such Fiscal Year shall be determined using the interim closing of the books method if reasonably practicable or, if the Transferor and Transferee so agree or the Partnership Representative (as defined herein) determines that the closing of the books is not reasonably practicable, the daily pro-rata method.

9.3 Distributions. Except as provided in Sections 9.4 and 9.5 (with respect to limitations on Distributions):

(a) To the extent that the amount distributed to (or withheld on behalf of) any Member in respect of a fiscal quarter of the Company is less than such Member's Assumed Tax Liability for such fiscal quarter, the Board shall distribute cash equal to such shortfall to such Member, at such times as to permit the Member to timely satisfy estimated tax or other tax payment requirements. Each Member's "Assumed Tax Liability" shall equal the expected aggregate federal tax liability (specifically including Medicare taxes under Code Section 1411) of such Member attributable to items of income, gain, loss, and deduction allocated to such Member for income tax purposes (excluding allocations under Section 704(c) principles), provided, however, any net income or net gain allocated to a Member shall be reduced by the cumulative net deductions and net losses that have been allocated to such Member to the extent such net deductions and net losses have not previously reduced taxable income and gain pursuant to this provision. The calculation of the Assumed Tax Liability shall take into account (i) the character of the relevant income or loss to such Member, (ii) the deductibility of state taxes for federal income tax purposes to the extent permitted by law, and (iii) the maximum deduction the Member is permitted under Code Section 199A, assuming that the Company is the only "qualified trade or business" of the Member, to the extent the Company is a "qualified trade or business" under Code Section 199A(d). Any amounts paid to Members under this Section 9.3(a) shall be treated as advances on distributions otherwise payable under this Agreement and are limited to available Distributable Net Cash, with any shortfall prorated according to each Member's relative Assumed Tax Liability for such fiscal year. For the avoidance of doubt, the Company will not be required to borrow cash in order to make a distribution pursuant to this Section 9.3(a). The Distributions pursuant to this Section 9.3(a) shall be in priority to any other Distributions. After making such tax advances pursuant to this Section 9.3(a), the Board shall have sole discretion regarding the amounts and timing of Distributions to Members, including to decide to forego payment of Distributions in order to provide for the retention and establishment of reserves of, or payment to third parties of, such funds as it deems necessary with respect to the reasonable business needs of the Company (which needs may include the payment or the making of provision for the payment when due of the Company's obligations, including, without limitation, present and anticipated debts and obligations, capital needs and expenses, the payment of any management or administrative fees and expenses, and reasonable reserves for contingencies).

(b) Subject to the required Distributions provided for in Section 9.3(a) above and subject to Sections 9.4 and 9.5, the Company may distribute Distributable Net Cash at such times and in such amounts as determined by the Board. All such Distributions shall be made as follows:

(i) First, to the Members, pro rata, based on their relative Unreturned Capital Contributions, until the Unreturned Capital Contributions of each Member are zero;

(ii) Then, to all Members, pro rata in accordance with their aggregate holdings of Units (treated as one class of Units); provided, however, Service Provider Members shall receive no distributions pursuant to this Section 9.3(b)(ii) with respect to Incentive Units until such Service Provider Members are eligible to receive non-liquidating distributions with respect to such Incentive Units pursuant to such Service Provider Member's Award Agreement granting such Incentive Units.

9.4 Limitation Upon Distributions. No Distribution shall be made if such Distribution would violate the Act or this Agreement.

9.5 Limitations on Distributions to Incentive Units.

9.5.1 Notwithstanding the provisions of this Agreement to the contrary, the Company shall not be required to make any Distribution to a Member (other than Distributions under Section 9.3(a)) on account of its restricted Incentive Units before such time as they are vested in full. If the Company applies the preceding sentence and does not make such Distribution to a Member, the Company shall retain such amount to be Distributed in accordance with Section 9.3, as applicable, by the Company, and may pay such amount to such Member if, as and when the Incentive Unit to which such retained amount relates vests in full.

9.5.2 Notwithstanding the provisions of this Agreement to the contrary, the Company shall not make any Distribution to a Member on account of its Incentive Units to the extent such Distribution would cause such Member to have a negative Adjusted Capital Account balance, as determined by reference to the Liquidation Value applicable to such Incentive Units. The foregoing sentence shall be construed to effect the intent of Section 4.2.

9.6 Withholding. To the extent the Board determines in good faith that the Company or any entity in which the Company holds an interest is required by law to withhold or to make tax payments on behalf of or with respect to any Member (e.g., withholding taxes under Sections 1441, 1445, 1446 or 3406 of the Code) ("Withholding Advances"), the Board may withhold such amounts and make such tax payments as so required. All Tax Advances made on behalf of a Member shall, at the option of the Board, (a) be promptly paid to the Company by the Member on whose behalf such Tax Advances were made or (b) be repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member.

9.7 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or return of its Capital Contribution, except as otherwise specifically provided for herein.

9.8 Loans to Company. Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company upon the approval of the Board.

9.9 Returns and Other Elections. The Board (or any officer designated by the Board) shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. The Board shall provide each Member with each Member's distributive share of the Company items shown on the Company's tax return, including each Member's Schedule K-1 or analogous schedule, with such information for each taxable year to be furnished to the Members as soon as reasonably practicable after the end of the Fiscal Year. Each Member shall report partnership items on the Member's tax returns in a manner that is consistent with the treatment of such items on the Company's tax returns. Each Member will provide, and will cause its Affiliates to provide, such information as the Company may request such that the Company may adequately and accurately complete tax returns required to be filed by the Company and respond to enforceable administrative information requests (or discovery in litigation).

9.10 Tax Matters.

9.10.1 Preparation of Tax Returns. The Managers shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company. On or before April 10, June 10, September 10 and December 10 of each Fiscal Year, the Company shall send to each Person who was a Member at any time during the prior quarter, an estimate of such Member's state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for such quarter, which estimate shall (at the election of Trigrow Member) have been reviewed and approved by the Company's outside tax accountants. In addition, no later than the later of (i) April 10 following the end of the prior Fiscal Year and (ii) 30 business days after the issuance of the final financial statement report for a Fiscal Year by the Company's auditors, the Company shall send to each Person who was a Member at any time during such Fiscal Year, a statement showing such Member's final state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for such Fiscal Year and a completed IRS Schedule K-1. Each Member shall notify the other Members upon receipt of any notice of a tax examination of the Company by U.S. federal or state or local tax authorities. Subject to the terms and conditions of this Agreement, in its capacity as the Partnership Representative (as defined below), the Trigrow Manager shall have the authority to prepare the tax returns of the Company using such permissible methods and elections as it determines in its reasonable discretion, including the use of any permissible method under Section 706 of the Code for purposes of determining the varying Company Interests of the Members."

9.10.2 Tax Elections. The Taxable Year shall be the Fiscal Year. The Managers shall cause the Company to have in effect an election under Section 754 of the Code (or any similar provisions of applicable state, local or foreign tax Law) for each Taxable Year. The Managers shall take commercially reasonable efforts to cause each Person in which the Company owns a direct or indirect equity interest (other than a Subsidiary), if any, that is so treated as a partnership to have in effect any such election for each Taxable Year. Each Member will upon request supply any information reasonably necessary to give proper effect to any such election.

9.10.3 Tax Controversies. The Trigrow Manager shall be designated and may, on behalf of the Company, at any time, and without further notice to or consent from any Member, act as the "partnership representative" of the Company (within the meaning given to such term in Section 6223 of the Code) (the "Partnership Representative") for purposes of the Code. The Partnership Representative shall have the right and obligation to take all actions authorized and required, respectively, by the Code for the Partnership Representative and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. The Partnership Representative shall keep all Members fully advised on a current basis of any contacts by or discussions with tax authorities, and the Members shall have the right to observe and participate through representatives of their own choosing (at their sole expense) in any tax proceedings. Nothing herein shall diminish, limit or restrict the rights of any Member under Subchapter C of Chapter 63 of the Code (Sections 6221 et seq.), as enacted by the Bipartisan Budget Act of 2015, as amended, any Treasury Regulations or other guidance promulgated thereunder or any similar state or local legislation, regulations or guidance.

9.10.4 Tax Examinations and Audits. The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by taxing authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Partnership Representative with respect to the conduct of examinations of the Company's tax returns by taxing authorities and any resulting proceedings. Each Member agrees that any reasonable action taken by the Partnership Representative in connection with audits of the Company shall be binding upon such Members and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company.

9.10.5 New Partnership Tax Audit Rules.

9.10.5.1 If the Board so determines in its good faith discretion, the Board may cause the Company to make an election pursuant to the provisions of the "Bipartisan Budget Act of 2015" (such provisions, the "New 2015 Audit Rules") and Section 6221(b) thereof or elect under Section 6226(a) of the Code to have any underpayment taken into account at the Member level, provided that the Company is eligible to make such elections. Each Member shall provide to the Board such information as is reasonably requested by the Board to enable the Board to reduce any Company-level assessment under Code Section 6225 as set forth in the New 2015 Audit Rules, to determine the allocation of any item of income, gain, loss, deduction, or credit of any such Company level assessment among the Members (such allocation, the "Apportionment"), to elect out of the New 2015 Audit Rules, or to comply with or be eligible to invoke any aspect of the New 2015 Audit Rules in any other respect.

9.10.5.2 At the request of the Board, each Member or former Member that was a Member at any time during the taxable year (the "Adjustment Year") with respect to which the IRS has proposed an adjustment in the amount of income, gain, loss, deduction or credit of the Company, or any Member's share thereof, agrees to timely file an amended federal income tax return for the Adjustment Year that takes into account all or that portion of the tax adjustment that has been apportioned to such Member or former Member, and to timely file an amended federal income tax return for any year subsequent to the Adjustment Year with respect to which any tax attribute is affected by reason of the tax adjustments taken into account in the Adjustment Year. Any amount of tax, interest and penalties that is due on account of the adjustments must be paid by the Member or former Member at the time such amended tax return is filed.

9.10.5.3 Any payment by the Company of a liability arising as a result of the New 2015 Audit Rules shall be treated as a deemed distribution to the Members in the same ratios as the Apportionment of such liability is made, and as a reduction to the applicable Member's Capital Account balances. Alternatively, and notwithstanding anything herein to the contrary, the Board shall have authority to require former Members to reimburse and indemnify the Company for any liability imposed by the New 2015 Audit Rules, in an amount not to exceed each such Member's or former Member's respective shares (if any), of such Company liability, and any such payment shall not be treated as a Capital Contribution or increase a Member's Capital Account balance except to the extent such Member is repaying or funding an amount treated as a distribution to such Member. The obligations of each Member (or former Member) under this Section shall survive the redemption of such Member's Membership Interest, or the dissolution of the Company.

9.10.6 Tax Returns and Tax Deficiencies. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign or other income tax return with the treatment of the item on the Company's return unless such inconsistent treatment is required under applicable law. The Partnership Representative shall have the discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

ARTICLE 10.
TRANSFERABILITY

10.1 General.

10.1.1 Each Member acknowledges and agrees that such Member (or any Permitted Transferee of such Member or owner of such Member) may not Transfer all or any portion of the Member's Membership Units or Unit Equivalents unless specifically provided for herein and, then, only if such Transfer is in full compliance with the provisions herein. For purposes of this Article 10, a Transfer shall include a Transfer that occurs with respect to one or more owners of a Member that is an Entity such that collectively more than fifty percent (50%) of the ownership interests of such Member Entity are Transferred shall also be deemed to be a Triggering Event for purposes of this Section (but only to the extent of such portion affected).

10.1.2 Notwithstanding Section 10.1.1 above, the following Transfers shall be permitted and deemed to be "Permitted Transfers" hereunder:

10.1.2.1 by a Member to the Company;

10.1.2.2 by a Member to Agrify Corporation, a Nevada Corporation;

10.1.2.3 Any Transfer by an institutional lender or its Affiliate to the Company or a Company Subsidiary (i) of Units acquired in connection with providing debt financing to a financial institution to whom it is permitted to Transfer and does Transfer the debt in accordance with the debt financing documents, (ii) in connection with a pledge by such institutional lender or its Affiliate of its Units to a secured creditor of such lender or such Affiliate to the extent required by a credit facility provided by such secured creditor or such Affiliate, but no further Transfer of such pledged Units may be made without approval by the Board subject to any requirements or conditions established by the Board for such Transfer, or (iii) to an Affiliate of such Lender;

10.1.2.4 with respect to a Member that is a natural person, any Transfer to a revocable living trust made for bona fide estate planning purposes for the benefit of the Member, its spouse, parents, siblings, and/or any lineal descendants (including adopted children) or

10.1.2.5 Any Transfer by a Member approved by the Board, subject to any requirements or conditions established by the Board for such Transfer.

10.1.3 Each Member hereby acknowledges the reasonableness of the restrictions on Transfer of Membership Units imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on Transfer contained herein shall be specifically enforceable.

10.2 Right of First Refusal.

10.2.1 Notwithstanding the above, a Member (the "Selling Member") may offer all (but not less than all) of its Membership Units to a third party purchaser (the "Third Party Purchaser"), other than a Member or the Company. If the Third Party Purchaser desires to purchase the Selling Member's Membership Units, the Selling Member shall then obtain from such Third Party Purchaser a bona fide written offer to purchase such interest, stating the price terms and conditions upon which the sale is to be made and the consideration offered therefor and certifying that such Third Party Purchaser has the financial capacity to make the purchase on such terms and conditions (the "Third Party Offer"). The Selling Member shall give written notification (a "Notice of Sale") to the Company, by certified mail or personal delivery, of its intention to so sell such Membership Units (the "Offered Interest"). The Notice of Sale shall be accompanied by a copy of the Third Party Offer.

10.2.2 The Company shall have the option (a "Buy Option") to purchase all, but not less than all, of the Offered Interest at the price and upon the terms stated in the Third Party Offer. The Buy Option may be exercised by the Company by giving written notification (a "Company Buy Notice") to the Selling Member within twenty (20) days after receiving the Notice of Sale (the "Company Option Period"). If the Company does not elect to purchase all of the Offered Interest within the Company Option Period, the Company shall notify the other Member(s) and the other Member(s) shall have the option to purchase the Portion of the Offered Interest not purchased by the Company for a period of twenty (20) days (the "Member Option Period"), at the price and upon the terms stated in the Third Party Offer, on a basis pro rata to the Units of the other Members who desire to purchase. If the Company and the other Members do not elect to exercise the option with respect to all of the Offered Interest, the Buy Option shall terminate. At any time within sixty (60) days following the expiration of the Member Option Period, the Selling Member shall be entitled to consummate the sale of the Offered Interest with respect to that its Membership Units to the Third Party Purchaser upon price, terms and conditions no more favorable to the Third Party Purchaser than those which are set forth in the Third Party Offer. However, if that sale is not made within sixty (60) days after Member Option Period has terminated, a new offer must be made and the provisions of this Section 10.2 will apply.

10.2.3 If the Company and/or the other Members choose to exercise the Buy Option as to all of the Offered Interest (i) the Selling Member and the Company (and/or the other Members, as applicable) shall designate the time, date and place of closing, provided that the date of closing shall be within one hundred and eighty (180) days after the receipt of the Buy Notice, and (ii) at the closing, the Company (and/or the other Members) shall purchase, and the Selling Member shall sell, the Offered Interest for an amount equal to the Purchase Price and in accordance with such other terms and conditions set forth in the Third Party Offer.

10.2.4 A sale of a Selling Member's Membership Units pursuant to this Section 10.2 shall be subject to Sections 10.3 and 10.4.

10.3 Substituted Members.

10.3.1 A transferee of a Membership Unit, or any portion thereof, shall become a Substituted Member if the Board approves the proposed Transfer, subject to all of the terms, conditions, restrictions and obligations of this Agreement. Such Substituted Member shall execute and deliver to the Joinder Agreement, attached as Exhibit B. If so admitted, the Substituted Member has all the rights and powers and is subject to all the obligations, restrictions and liabilities of the Member originally assigning the Membership Unit. The admission of a Substituted Member shall not release the Member assigning the Membership Unit from any liability to the Company that existed prior to the approval. The transferee pursuant to a Permitted Transfer above, or Section 10.5 below, shall automatically be a Substituted Member.

10.3.2 If the Board does not approve the Transfer of the Transferring Member's Membership Units to a proposed transferee as provided in Section 10.1.2, then the proposed transferee shall become an Assignee.

10.3.3 Upon and contemporaneously with any Transfer of a Member's Membership Units, the Transferring Member shall cease to have any residual rights associated with the Membership Units Transferred to the transferee.

10.4 Additional Conditions to Recognition of Transferee as a Substituted Member.

10.4.1 If a Transferring Member Transfers Membership Units to a Person who is not already a Member, the Board may require the Transferring Member and the proposed successor-in-interest to execute, acknowledge and deliver to the Board (and the Transferring Member and the proposed successor-in-interest shall execute) such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Board may reasonably deem necessary or desirable to accomplish any one or more of the following:

10.4.1.1 Constitute such successor-in-interest as a Substituted Member and confirm such Substituted Member has accepted, assumed and agreed to be subject to and bound by all of the terms, obligations and conditions of this Agreement, as the same may have been further amended;

10.4.1.2 Maintain the status of the Company as a partnership for federal tax purposes; and

10.4.1.3 Assure compliance with any applicable state and federal laws and regulations, including Securities Laws.

10.4.1.4 The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any Transfer or purported Transfer in violation of this Article 10. All costs and expenses incurred by the Company in connection with any Transfer pursuant to this Article 10 and another Person becoming a Member, in respect of such interest or such part thereof, including the fees and disbursements of counsel, shall be paid by the Transferring Member.

10.5 Dissociation Provision Upon Certain Triggering Events.

10.5.1 In the event of a Triggering Event (as defined below), the Company, and, then, the other Members shall have the option to purchase all, but not less than all, of the Membership Units of the Dissociated Member (as hereinafter defined) upon the terms set forth in this Section 10.5. A "Triggering Event" means, with respect to any Member, the occurrence of any of the following events: (i) the death of such Member (or, where the Member is a trust, the death of the grantor of such trust, or last surviving grantor should there be more than one), (ii) the dissolution of the marriage (including, if applicable, common law marriage) of a Member where a portion or all of a Member's Membership Units are awarded or otherwise transferred to such Member's spouse; (iii) the execution, attachment, levy or other similar seizure against a Membership Unit of a Member, which is not dismissed or bonded within ninety (90) days; (iv) any involuntary transfer, assignment, or other disposition of a Membership Unit by operation of law; (v) the Bankruptcy of such Member, which is not dismissed within ninety (90) days; (vi) the Disability of a Service Provider Member (other than the Trigrow Member); or (vii) the voluntary or involuntary termination of the services of a Service Provider Member, with or without cause (other than the Trigrow Member). The Member with respect to whom a Triggering Event occurs is sometimes referred to herein as a "Dissociated Member." Notwithstanding anything to the contrary herein, (A) subject to (1) above where a Member is a revocable trust, a Triggering Event that occurs with respect to a grantor of the Trust shall also be deemed to be a Triggering Event for purposes of this Section; and (B) where a Member is an Entity, a Triggering Event that occurs with respect to one or more owners of such Entity that collectively constitute more than fifty percent (50%) of the owners of such Entity shall also be deemed to be a Triggering Event for purposes of this Section (but only to the extent of such portion affected).

10.5.2 In order to exercise such purchase rights, the Company shall, within thirty (30) calendar days following written notice of the occurrence of a Triggering Event, deliver to the Dissociated Member a written notice of intention to exercise the option (the "Dissociation Option") to purchase all, or part of the Dissociated Member's Membership Units. If the Company does not exercise the Dissociation Option to purchase all of the Dissociated Member's Membership Units then the Company shall notify the other Members in writing, providing the other Members with a copy of the Company's notice of intention with respect to right to purchase. Thereafter, the other Members shall have the right to purchase the Dissociated Member's Membership Units not purchased by the Company at the same price and on the terms as available to the Company under this Agreement on a basis *pro rata* to the Units of the other Members (the "Dissociation Event Purchasing Member(s)") who may desire to purchase. To exercise such purchase rights, the Dissociation Event Purchasing Member(s) shall, within thirty (30) calendar days after receiving notice from the Company, deliver to all of the Member(s) (including the Dissociated Member) a written notice of intention to exercise the right to purchase so much of the Dissociated Member's Membership Units not otherwise purchased by the Company as the Dissociation Event Purchasing Member(s) may desire to purchase. If the Dissociation Event Purchasing Member(s) and/or Company do not exercise the Dissociation Option, or do not exercise the Dissociation Option as to all of the Dissociated Member's Units, then the Dissociated Member, or successor-in-interest, shall remain a Member as to all of the Units held by the Dissociated Member on the date that the Triggering Event occurred, under the terms and conditions of this Agreement.

10.5.3 The purchase price of the Dissociated Member's Membership Units shall be for an agreed upon amount, or if no amount can be agreed upon, the fair market value of such interest (adjusted to reflect any applicable lack of marketability, minority or other discounts) as determined by an independent qualified appraiser appointed by the Company (or, by the Dissociation Event Purchasing Member(s), if applicable), and the Dissociated Member (or its representative, as applicable). If the parties cannot agree on an appraiser, the Company (or, if the Dissociation Event Purchasing Member(s), as applicable), and the Dissociated Member shall each choose an independent qualified appraiser and the two (2) appraisers shall choose third independent qualified appraiser who has at least five (5) years' experience in business valuations and appraisals. The third appraiser shall thereupon determine the fair market value of such interest. The Dissociated Member shall thereupon be entitled to an amount equal to such value of the Member's Membership Units in the Company, to be paid at least twenty percent (20%) down, with the remaining balance payable pursuant to the terms of a promissory note (the "Note") to be executed by the Company and/or the Dissociation Event Purchasing Member(s). The Note shall provide for monthly payments amortized and due in equal installments over a period of not more than seventy-two (72) months and interest shall accrue on the declining principal balance at a rate of at least the Prime Rate plus two percent (2%) per annum, unless otherwise determined by the parties. The Note shall be dated as of the date the down payment is required to be made under this Agreement. The Note shall provide that the maker may prepay all or any portion of the unpaid principal balance and accrued interest at any time, without penalty. The Dissociated Member's Units in the Company shall be pledged as security for the Note. The value of the Member's Membership Units shall include the amount of any distributions to which the Member is entitled under this Operating Agreement through the date of the sale of the Member's Membership Units to the Purchasing Member(s) and/or the Company, based upon the Member's right to share in distributions from the Company (to the extent that such distributions have not been paid) reduced by any damages sustained by the Company as a result of the occurrence of the Triggering Event, as determined by the Board in its reasonable discretion. The Dissociated Member and the Purchasing Member(s) and/or the Company shall execute such documents and instruments as may be necessary or appropriate to effect the sale of the Membership Unit pursuant to the terms of this Section 10.5.

10.6 Other Note Provisions. The Note shall include the provision that the entire unpaid principal balance, and all accrued interest, shall become immediately due and payable upon the happening of any of the following conditions:

10.6.1.1 Adjudication of bankruptcy of the Maker of the Note;

10.6.1.2 Voluntary or involuntary petition by or on behalf of the Maker of the Note for arrangement or reorganization, or for the protection of creditors and the debtor, under the United States Bankruptcy Code;

10.6.1.3 Upon default in payment of any of the terms by the Maker of amounts required to be paid in the Note;

10.6.1.4 In the event the sale is to a Member, upon the sale of all, or substantially all, of the Membership Interests in the Company by the Member;

10.6.1.5 If the sale is to the Company, upon the sale of the Company of all or substantially all of the assets of the Company;

10.6.1.6 A merger, consolidation or reorganization in which the Company is a party and in which the Members before such ownership change do not retain, directly or indirectly, at least a majority of the beneficial interest in the Membership Interests of the Company after such transaction; or

10.6.1.7 A refinancing, where there is sufficient additional cash, in the reasonable discretion of the Board, to pay off (or down) the Note.

10.7 Drag Along Rights. Each Member (i) will consent to and raise no objections to an Approved Sale of the Company, and (ii)(A) if such Approved Sale is structured as a sale of Membership Interests, will agree to sell, and will sell, all of the Member's Membership Interests on the terms and conditions (including any escrow or indemnification provisions) approved by the Board and the Members holding a Majority of the Membership Interests, (B) if such Approved Sale is structured as a merger or consolidation, will vote in favor thereof and will not exercise any dissenters' rights of appraisal that such Member may have under law, including, but not limited to, Chapters 86 and 92A of the Act, (C) if such Approved Sale is structured as a sale of all or substantially all of the assets of the Company and a subsequent dissolution and liquidation of the Company, will vote in favor thereof and will vote in favor of the subsequent dissolution and liquidation of the Company, and (D) will take all necessary actions in connection with consummation of such Approved Sale as are reasonably requested by the Company's Board. Further, in the event any Member refuses or fails to take any of the foregoing actions as requested by the Company, the Company, acting by and through the Board, is hereby granted a power of attorney to execute such documents and instruments as the Company may reasonably determine necessary in order for such Member to satisfy the agreements contained in this Section 10.7. The parties acknowledge the aforesaid power of attorney is coupled with an interest and is irrevocable.

10.8 Put Option and Call Option**.** Company hereby grants to the Members a put option on each Member's respective Units of the Company, as set forth herein ("Put Option"), and the Members hereby grant to Company a call option on each Member's respective Units of the Company, as set forth herein ("Call Option").

10.8.1 The Put Option and Call Option may each only be exercised, if at all, during the exercise period (the "Exercise Period") as follows:

(a) Fifty Percent (50%) of the options may be exercised, if at all, on the first day of the thirteenth (13^{th}) month following either (i) an initial Public Offering of Agrify Corporation stock, or (ii) a reverse merger of Agrify Corporation into a publicly-listed entity;

(b) Fifty Percent (50%) of the options may be exercised, if at all, on the first day of the twenty-fifth (25^{th}) month following either (i) an initial Public Offering of Agrify Corporation stock, or (ii) a reverse merger of Agrify Corporation into a publicly-listed entity.

10.8.2 In each case, the consideration for Units of the Company purchased pursuant to either the Put Option or Call Option shall be limited to payment in Agrify Corporation common stock.

10.8.3 The Option Exercise Price shall determine the value of all of the Units transferred pursuant to either the Put Option or Call Option. "Option Exercise Price" shall mean the following price, as determined at the time of such option exercise:

(a) Fifty Percent (50%) of the Gross Sales of Company multiplied by half of the P/S Ratio of Agrify Corporation (as each term is defined herein); plus

(b) Fifty Percent (50%) of the Net Earnings of Company multiplied by half of the P/E Ratio of Agrify Corporation (as each term is defined herein);

10.8.4 "Gross Sales" means, for the then-current date, the gross sales of Agrify Corporation in the preceding year as stated in Agrify Corporation's audited GAAP financials for such year.

10.8.5 "Net Earnings" means, for the then-current date, the net earnings of Agrify Corporation for the preceding year, as stated in Agrify Corporation's audited GAAP financials for such year

10.8.6 "P/S Ratio" means, the then-current Fair Market Value of Agrify Corporation common stock multiplied by the then-current number of all outstanding shares of Agrify Corporation, divided by the Gross Sales of Agrify Corporation.

10.8.7 "P/E Ratio" means, the then-current Fair Market Value of Agrify Corporation common stock multiplied by the then-current number of all outstanding shares of Agrify Corporation, divided by the Net Earnings of Agrify Corporation.

10.8.8 "Fair Market Value" means, as of the effective date of the option exercise notice, the per-share value of Agrify Corporation common stock as determined by either (i) if there is an existing, bona-fide offer from an unrelated third party for all shares of Agrify Corporation or substantially all of the assets of Agrify Corporation, the per-share value as either defined in such stock purchase offer or expected to be received as a result of liquidation after such asset sale, or (ii) if there is no such bona-fide third party offer as herein described, then by the highest per-share price for Agrify Corporation on the relevant public stock exchange.

10.8.9 Procedure. During the Exercise Period, either the Members or Company or both may exercise their respective option by delivering a written notice to the other party. The closing of the sale of Units pursuant to such an exercise of the Call Option or Put Option (the "Closing") will occur within One Hundred and Twenty (120) days following the delivery of such notice of exercise, except that such Closing may be delayed for up to an additional ninety (90) days if reasonably required by Company or the Members to calculate the amounts described herein or otherwise satisfy any requirements or conditions reasonably related to the applicable option.

10.8.10 The Call Option and Put Option are each conditioned upon the Members and Company executing reasonable and customary agreements related to the contemplated transactions, including but not limited to (i) a purchase agreement for Member's Units of the Company, and (ii) stock purchase and shareholder agreements for shares of Company.

10.8.11 The Call Option and Put Option set forth herein shall be binding upon and inure to the benefit of each of the Members' respective successors and assigns.

10.8.12 The Call Option and Put Option include all Units of Company held by the Members as of the date of this Agreement and any Units hereinafter acquired by the Members.

ARTICLE 11.
Issuance of Membership Interests

11.1 Issuance of Additional Membership Units to New Members. From the date of the formation of the Company, any Person acceptable to the Board may become a Member in the Company by the issuance by the Company of Membership Units in such amounts and designation(s) and for such consideration as the Board shall determine, subject to the other terms and conditions of this Agreement.

11.2 Issuance of Additional Membership Interests to Existing Members. From the date of the formation of the Company, the Company may issue additional Membership Units to one or more existing Members in such amounts and designation(s) and for such consideration as the Board shall determine, subject to the other terms and conditions of this Agreement.

11.3 Part Year Allocations With Respect to New Members. No new Members shall be entitled to any retroactive allocation of losses, income, or expense deductions incurred by the Company. At the time a Member is admitted and in accordance with the provisions of Section 706(d) of the Code and the Regulations thereunder, the Board may, at its option, close the Company books (as though the Company's Fiscal Year had ended) or make *pro rata* allocations of loss, income, and expense deductions to a new Member for that portion of the Company's Fiscal Year in which a Person became a Member.

ARTICLE 12.
DISSOLUTION AND TERMINATION

12.1 Dissolution.

12.1.1 The Company shall be dissolved only upon the occurrence of any of the following events:

12.1.1.1 Approval of such dissolution by the Members holding a Super-Majority Interest;

12.1.1.2 the entry of a decree of judicial dissolution.

Notwithstanding anything to the contrary in the Act, the Company shall not be dissolved upon the death, retirement, resignation, expulsion, Bankruptcy or dissolution of a Member. As soon as possible following the occurrence of any of the events specified in Section 12.1.1 effecting the dissolution of the Company, the appropriate representative of the Company shall execute all documents required by the Act at the time of dissolution and file or record such statements with the appropriate officials.

12.2 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until winding up and Distribution is completed.

12.3 Winding Up, Liquidation and Distribution of Assets.

12.3.1 If the Company is dissolved and its affairs are to be wound up (including upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations), the Board shall:

12.3.1.1 sell or otherwise liquidate all of the Company's assets as promptly as practicable;

12.3.1.2 allocate Net Profits, Net Losses and other items of income, gain, loss and deduction to the Members' respective Capital Accounts in accordance with the applicable provisions of this Agreement;

12.3.1.3 discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such reserves as the Board may reasonably determine, to be necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of Members, the amounts of such reserves shall be deemed to be an expense of the Company); and

12.3.1.4 distribute the remaining assets not later than the latest time specified for such distributions pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2) to the Members in accordance with Section 9.3(b). If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted to reflect such deemed sale.

12.3.2 Upon completion of the winding-up, liquidation and distribution of the assets, the Company shall be deemed terminated.

Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member has an Adjusted Capital Account (after giving effect to all contributions, Distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution so as to restore its Capital Account to zero, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company, to the other Members, or to any other Person for any purpose whatsoever.

12.4 Filing or Recording Statements. Upon the conclusion of winding up, the appropriate representative of the Company shall execute all documents required by the Act at the time of completion of winding up and file or record such documents with the appropriate officials.

12.5 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution or any other Distributions. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Members shall have no recourse against any other Member or the Board.

ARTICLE 13.
BOOKS AND RECORDS

13.1 Accounting Period. The Company's accounting period shall be the Fiscal Year.

13.2 Accounting Principles. For financial reporting purposes, the Company shall use GAAP applied on a consistent basis as determined by the Board.

13.3 Books of Account and Records. At the expense of the Company, proper and complete records, books of account and other relevant Company documents shall be maintained and preserved, during the term of the Company, and for five years thereafter, by the Board, in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company and required by applicable law.

13.4 Information Rights. The Company shall furnish to each Qualified Member and to any other Member designated by the Board to receive the following reports:

13.4.1 Annual Financial Statements. As soon as available, and in any event within 180 days after the end of each Fiscal Year or such later time as such financials are required to be delivered under any Financing Document, consolidated balance sheets of the Company and Company Subsidiaries as at the end of each such Fiscal Year and consolidated statements of income, cash flows and Members' equity for such Fiscal Year, in each case setting forth in comparative form the figures for the previous Fiscal Year.

13.4.2 Quarterly Financial Statements. As soon as available, and in any event within 45 days after the end of each quarterly accounting period in each Fiscal Year (other than the last fiscal quarter of the Fiscal Year) or such later time as such financials are required to be delivered under any Financing Document, unaudited consolidated balance sheets of the Company and Company Subsidiaries as at the end of each such fiscal quarter and for the current Fiscal Year to date and unaudited consolidated statements of income, cash flows and Members' equity for such fiscal quarter and for the current Fiscal Year to date, in each case setting forth in comparative form the figures for the corresponding periods of the previous fiscal quarter.

13.4.3 Upon reasonable notice from a Qualified Member or from any other Member to whom the Board grants any rights under this Section, and in a manner as does not interfere with the conduct of the business of the Company and the Company Subsidiaries, the Company shall, and shall cause its Managers, officers and employees to, afford each Qualified Member (and any other Member granted rights under this Section) and its Representatives reasonable access during normal business hours to (i) the Company's and the Company Subsidiaries' properties, offices, plants and other facilities, (ii) the corporate, financial and similar records, reports and documents of the Company and the Company Subsidiaries, including all books and records, minutes of proceedings, internal management documents, reports of operations, reports of adverse developments, copies of any management letters and communications with Members or Board, and to permit each Qualified Member (and any other Member granted rights under this Section) and its Representatives to examine such documents and make copies thereof, and (iii) the Company's and the Company Subsidiaries' officers and senior employees, and to afford each Qualified Member (and any other Member granted rights under this Section) and its Representatives the opportunity to discuss the affairs, finances and accounts of the Company and the Company Subsidiaries with their officers and senior employees. However, the foregoing shall not obligate the Company to provide access to any information that it reasonably considers to be a trade secret or similar confidential information or would adversely affect the attorney-client privilege between the Company and its Affiliates and its counsel.

ARTICLE 14.
MISCELLANEOUS PROVISIONS

14.1 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served if sent by facsimile or electronic mail transmission, delivered by messenger, overnight courier, or mailed, certified first class mail, postage prepaid, return receipt requested, and addressed or sent to the Member's address, as set forth on Exhibit A, as amended. Such notice shall be effective, (a) if delivered by messenger or by overnight courier, upon actual receipt (or if the date of actual receipt is not a business day, upon the next business day); (b) if sent by facsimile or electronic mail transmission, upon electronic confirmation of successful transmission (or if the time of such electronic confirmation of successful transmission is later than 5:00 Pacific time on a business day (or reflects delivery on a non-business day), upon the next business day); or (c) if mailed, upon the earlier of (i) three (3) business days after deposit in the mail; or (ii) the delivery as shown by return receipt therefor. Any Member or the Company may change its address by giving notice in writing to the Company and the other Members of its new address.

14.2 Governing Law; Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be within 25 miles of Burlington, Massachusetts. The arbitration shall be governed by the laws of the State of Nevada. Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. In making determinations regarding the scope of exchange of electronic information, the arbitrator(s) and the parties agree to be guided by The Sedona Principles, Third Edition: best practices, recommendations & principles for addressing electronic document production. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in person hearings. Time is of the essence for any arbitration under this agreement and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Arbitrator(s) shall agree to these limits prior to accepting appointment. The prevailing party shall be entitled to an award of reasonable attorney fees. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the parties. Service of process, summons, notice or other document by registered mail to the address referenced in Section 14.1 shall be effective service of process for any suit, action or other proceeding brought in any such court.

14.3 Waiver of Action for Partition. During the term of the Company, each Member irrevocably waives any right that it may have to maintain any action for partition with respect to the Company Property.

14.4 Amendments. No provision of this Agreement may be amended or modified except by an instrument in writing executed by the Company, and Members holding a Super-Majority Interest; provided however that no such amendment shall materially and adversely affect the rights of any Member without the consent of such Member.

14.5 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Company or any other Member, to execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

14.6 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and *vice versa*, and the masculine gender shall include the feminine and neuter genders and *vice versa*. The word “including” mean “including without limitation” and “or” means “and/or”, unless (in either case) the context clearly requires otherwise.

14.7 Effect of Inconsistencies with the Act. It is the express intention of the Members and the Company that this Agreement shall be the sole source of agreement among them with respect to the subject matter contained herein, except to the extent that other agreements are expressly referenced in this Agreement, and, except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. In the event that the Act is subsequently amended or interpreted in such a way to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The duties and obligations imposed on the Members as such shall be those set forth in this Agreement, which is intended to govern the relationship among the Company and the Members, notwithstanding any provision of the Act or common law to the contrary.

14.8 Waivers. The failure of any Member or the Company to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

14.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Member or the Company shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

14.10 Attorneys' Fees. Should the Company or any Member reasonably retain counsel for the purpose of enforcing or preventing breach of any provision of this Agreement, including instituting any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision of this Agreement, for a declaration of such Person's rights or obligations under this Agreement, or for any other judicial remedy, then, if the matter is settled by judicial determination or arbitration, the prevailing party (whether at trial, on appeal, or arbitration) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred, including reasonable attorneys' fees and costs for services rendered to the prevailing party or parties. If both parties are entitled to judgments or arbitration awards, the party with the larger judgment or arbitration award shall be deemed the prevailing party for purposes of the immediately preceding sentence.

14.11 Confidentiality. Each Member and Manager (each, a "Key Person") acknowledges that during the term of this Agreement, such Key Person will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, and its Affiliates that are not generally known to the public, including, without limitation, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, expansion plans, strategic plans, designs, drawings, concepts, proprietary hardware and software, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "Confidential Information"). In addition, each Key Person acknowledges that: (i) the Company has invested, and continues to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company with a competitive advantage over others in the marketplace; and (iii) the Company would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which any Key Person is subject, no Key Person shall, directly or indirectly, disclose or use at any time, including use for personal, commercial or proprietary advantage or profit, either during its association with the Company or thereafter, any Confidential Information of which such Key Person is or becomes aware. Each Key Person in possession of Confidential Information shall take all commercially reasonable steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft. Nothing contained in this Section 14.11 shall prevent any Key Person from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Key Person; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to other Key Persons; (vi) to such Key Person's Representatives or Company Representatives who, in the reasonable judgment of such Key Person, need to know such Confidential Information and agree to be bound by the provisions of this Section 14.11 as if a Key Person; or (vii) to any potential permitted transferee in connection with a proposed Transfer of Units from such Key Person, as long as such transferee agrees to be bound by the provisions of this Section 14.11 as if a Key Person; provided, however, that in the case of clause (i), (ii), or (iii), such Key Person shall notify the Company of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and the Board unless otherwise required by applicable law or regulation) and reasonably assist the Company, at the Company's sole cost, in the Company's reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available. The restrictions of this Section 14.11 shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Key Person in violation of this Agreement; or (ii) is or becomes available to a Key Person or any of its Representatives on a non-confidential basis prior to its disclosure to the receiving Key Person and any of its Representatives in compliance with this Agreement.

14.12 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent that any provision of this Agreement is prohibited or ineffective under the Act or common law, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act or common law.

14.13 Heirs, Successors, and Assigns. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

14.14 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

14.15 Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

14.16 Entire Agreement. This Agreement contains the entire agreement of the Company and the Members relating to the rights granted and obligations assumed under this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent written modification signed by the Member to be charged. In the event of an inconsistency or conflict between the provisions of this Agreement and any provision of the Incentive Plan or an applicable Award Agreement with respect to the subject matter of the Incentive Plan or Award Agreement, the Board shall resolve such conflict in their sole discretion.

14.17 Spousal Consent. If a Member is a natural Person, contemporaneous with a Member's execution of this Agreement or the Joinder Agreement, as applicable, such Member (if such Member is married) shall cause his or her spouse to execute and deliver to the Company a Spousal Consent in the form attached hereto as Exhibit C. If a Member marries or remarries subsequent to the date of such Member's execution of this Agreement, such Member shall within thirty (30) days thereafter similarly cause his or her new spouse to execute and deliver to the Company such a Spousal Consent. If the Company incurs losses, damages or expenses in connection with any procedural or substantive claims or demands made by any spouse, former spouse, registered or unregistered domestic partner or former domestic partner, or other individual asserting marital, quasi-marital, domestic partner or similar rights, and the individual making such claims or demands has not executed and delivered a Spousal Consent pursuant to this Section 14.17, the Member in respect of whom such claims or demands arise shall promptly and fully reimburse the Company for all such losses, damages and expenses. If the Company incurs losses, damages or expenses in connection with any procedural or substantive claims or demands made by any spouse, former spouse, registered or unregistered domestic partner or former domestic partner, or other individual asserting marital, quasi-marital, domestic partner or similar rights, and the individual making such claims or demands has not executed and delivered a Spousal Consent and Agreement or Special Consent and Agreement pursuant to this Section 14.17, the Member in respect of whom such claims or demands arise shall promptly and fully reimburse the Company for all such losses, damages and expenses.

14.18 Equitable Remedies. Each party hereto acknowledges that, to the extent that a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

14.19 Waiver. Each party is relying on the enforceability of this Agreement, and the parties hereby waive the right to assert any common laws defenses of illegality or public policy in any proceeding relating to the enforcement of this Agreement. The preceding sentence is specifically enforceable.

14.20 Representation. BY EXECUTING THIS AGREEMENT, EACH MEMBER ACKNOWLEDGES THAT IT HAS HAD THE ABILITY AND OPPORTUNITY (WHETHER OR NOT TAKEN) TO SECURE THE ADVICE OF INDEPENDENT LEGAL COUNSEL OF ITS OWN CHOOSING WITH RESPECT TO THE ADVISABILITY OF EXECUTING AND ENTERING INTO THIS AGREEMENT AND THE LEGAL EFFECT OF ANY PROVISION OF THIS AGREEMENT. THE PARTIES HERETO THEREFORE STIPULATE AND AGREE THAT THE RULE OF CONSTRUCTION TO THE EFFECT THAT ANY AMBIGUITIES ARE TO BE OR MAY BE RESOLVED AGAINST THE DRAFTING PARTY SHALL NOT BE EMPLOYED IN THE INTERPRETATION OF THIS AGREEMENT TO FAVOR ANY PARTY AGAINST ANOTHER.

[Signature page to follow]

THE UNDERSIGNED, being the Company and all of the Members of the Company, hereby evidence their approval, adoption and ratification of the foregoing Operating Agreement, which shall be effective as of the date first written above.

COMPANY:

AGRIFY BRANDS, LLC,
a Nevada limited liability company

By: Agrify Corporation,
a Nevada Corporation, its Manager

By: _____
Name: Niv Krikov
Title: Chief Financial Officer

By: _____
Trek Manzoni, its Manager

MEMBERS:

TRIGROW SYSTEMS, INC.,
a Nevada corporation

By: _____
Name: Raymond Chang
Title: Chief Executive Officer

THE HOLDEN COMPANY, INC.,
a Delaware corporation

By: _____
Name: Trek Manzoni
Title: President and CEO

[Signature Page to Agrify Brands, LLC Operating Agreement]

ADDENDUM I

DEFINITIONS

Act. The Nevada Limited Liability Company Act, as amended from time to time. The Nevada Limited Liability Company Act at Nevada Revised Statutes Chapter 86, as amended.

Adjusted Capital Account. Means, with respect to any Member, the balance in such Member's Capital Account as of the end of the Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account the amount, if any, which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Regulations, after taking into account thereunder any changes during such year in Partnership Minimum Gain and in any Partner Minimum Gain; and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

This definition of Adjusted Capital Account is intended to comply with the provisions of Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Regulations, and shall be interpreted consistently with those provisions.

Affiliate. With respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

Agreement. This Operating Agreement as originally executed and as amended from time to time.

Assignee. A transferee of a Membership Unit who has not been admitted as a Member pursuant to Section 10.3. An Assignee shall have no voting rights in the Company with respect to its Membership Unit, including, without limitation, any and all rights to participate in the management of the business and affairs of the Company and to vote on any matters as to which a Member is entitled to vote. The Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to the assigned Membership Unit or portion thereof.

Articles of Organization. The articles of organization of the Company as filed with the Nevada Secretary of State as the same may be amended from time to time.

Bankruptcy. With respect to a Person, the occurrence of any of the following events: (a) such Person makes an assignment for the benefit of creditors; (b) such Person files a voluntary petition in bankruptcy; (c) such Person is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceeding; (d) such Person files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (e) such Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature; (f) such Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person or of all or any substantial part of its properties; or (g) one hundred twenty (120) days after the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or if within ninety (90) days after the appointment without its consent or acquiescence of a trustee, receiver, or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

Capital Account. As of any given date, the capital account of each Member as described in Section 8.4 and maintained to such date in accordance with this Agreement.

Capital Contribution. Shall mean, for any Member, the total amount of cash and cash equivalents and the fair market value of any property contributed to the Company by such Member, including its Initial Capital Contribution.

Capital Event. Shall mean (a) a Reorganization, (b) any other transaction in contemplation of liquidation or revaluation of the Company in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) or (c) another event or series of events substantially similar to the foregoing as determined by the Board.

Code. The Internal Revenue Code of 1986, as amended from time to time.

Company. AGRIFY BRANDS, LLC a Nevada limited-liability company.

Company Property. All assets (real or personal, tangible or intangible, including cash) of the Company.

Disability. With respect to any Member, has the meaning set forth in any Award Agreement, employment agreement or other written contract of engagement entered into between the Company or a Company subsidiary and such Member, or if none, then "Disability" means such Member's incapacity due to physical or mental illness that shall have prevented such Member from performing his or her duties for the Company or any of the Company subsidiaries on a full-time basis for more than 90 days.

Distributable Net Cash. For any fiscal period, the sum of (a) any receipts of the Company for such fiscal period, less (b) (i) any amounts required to pay the costs and expenses of the Company incurred for such fiscal period, (ii) any debt service interest or principal payments on any Company indebtedness, and (iii) any reasonable Reserves established or increased by the Board, plus (c) any decreases in the Company's Reserves, as reasonably determined by the Board. In no event will Capital Contributions received by the Company constitute Distributable Net Cash for purposes hereof, and Distributable Net Cash (as defined herein) shall not be reduced by depreciation, amortization, cost recovery deductions or similar non-cash allowances.

Distribution or Distribute. Any distribution made by the Company to or for the benefit of a Member, whether in cash, property or securities of the Company and whether it be by liquidating distribution or otherwise.

Electronic Transmission. Shall mean any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Entity. Any general partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust, or foreign business organization or other juridical person.

Financing Document. Shall mean any credit agreement, guarantee, financing or security agreement or other agreements or instruments governing indebtedness of the Company or any of the Company Subsidiaries.

Fiscal Year. Shall mean the calendar year, unless the Company is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year (including any short taxable year, to the extent applicable federal income tax law causes the Company to have a short taxable year).

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

Holden Member. Shall mean The Holden Company, Inc., a Delaware corporation.

Hypothecate or Hypothecation. A lien, pledge, hypothecation, mortgage, grant of a security interest, or effecting an encumbrance either as security for repayment of a liability or for any other purpose.

Initial Capital Contribution. The initial contribution by each Member to the capital of the Company pursuant to Section 8.1 of this Agreement.

Initial Members. Shall mean the Trigrow Member and the Holden Member.

Majority or Majority Interest. The Membership Interests of the Members which taken together exceed fifty percent (50%) of the voting Units. With respect to the Board, Majority shall mean more than 50% of the Managers in office at the time.

Member. Shall mean (a) each Person identified on Exhibit A as of the date hereof as a Member; and (b) and each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Act, in each case so long as such Person is shown on the Company's books and records as the owner of one or more Units. The term Members shall specifically include Service Provider Members. The Members shall constitute the "members" (as that term is defined in the Act) of the Company.

Membership Interest. An interest in the Company owned by a Member, including such Member's right (based on the type and class of Unit or Units held by such Member), as applicable, (a) to a share of Distributions from the Company, (b) to an allocable share of Net Profits, Net Losses and other items of income, gain, loss, deduction and credit of the Company; (c) to vote on, consent to or otherwise participate in any decision of the Members as provided in this Agreement; and (d) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the Act.

Membership Unit. A unit representing a fractional part of the Membership Interests of the Members and shall include all types and classes of Units; provided, that any type or class of Unit shall have the privileges, preference, duties, liabilities, obligations and rights set forth in this Agreement and the Membership Interests represented by such type or class or series of Unit shall be determined in accordance with such privileges, preference, duties, liabilities, obligations and rights.

Net Profits and **Net Losses** mean, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company's gross taxable income or loss, as the case may be, determined in accordance with Code Section 703(a) (where, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in Net Profits or Net Losses), with such adjustments as agreed to by the Board.

Permitted Transfer. A Transfer of Units carried out pursuant to Section 10.1.2.

Permitted Transferee. A recipient of a Permitted Transfer of Units.

Person. Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

Prime Rate. The prime commercial lending rate in effect from time to time as described in the Wall Street Journal (West Coast Edition).

Qualified Member. Shall mean the (i) Initial Members, (ii) any Permitted Transferee of the Initial Members, or (iii) such other Person as may be designated by the Board as a Qualified Member.

Regulations. The U.S. Department of the Treasury regulations promulgated under the Code.

Reorganization. The merger, exchange, consolidation, recapitalization or conversion of the Company, or the sale or other disposition of all or substantially all of the Membership Units, or any other transaction pursuant to which one or more Persons acquire all or substantially all of the ownership interests in, the Company in a single or series of related transactions, including a merger or conversion of the Company into a corporation or other Entity.

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

Reserves. With respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Board for any Company purpose, including, but not limited to, working capital and for payment of taxes, insurance, debt service, and any other costs or expenses incident to the ownership or operation of the Company's business.

Securities Laws. Any Federal securities acts and laws as well as the securities acts and laws of any state, including the Securities Act of 1933, as amended (the "Securities Act").

Service Provider Member. A Service Provider who has received an award of Incentive Units.

Subsidiary. With respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

Super-Majority or Super-Majority Interest. The Membership Interests of the Members which taken together exceed Sixty percent (60%) of the voting Units.

Target Capital Account. The balance in such Member's Capital Account as of the end of the Fiscal Year, increased by the amount, if any, which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Regulations.

Third Party Purchaser. Any Person who, immediately prior to the contemplated transaction is not a Permitted Transferee of any Person who directly or indirectly owns or has the right to acquire any Units (or applicable Unit Equivalents).

Transfer. Shall mean to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Units owned by a Person or any interest (including a beneficial interest) in any Units or Unit Equivalents owned by a Person. "**Transfer**" when used as a noun shall have a correlative meaning. "**Transferor**" and "**Transferee**" mean a Person who makes or receives a Transfer, respectively.

Transferring Member. A Member who voluntarily Transfers all or any part of the Member's Interest in the Company to any third person or entity.

Trigrow Member. Shall mean Trigrow Systems, Inc., a Nevada corporation.

Unit. A Membership Unit.

Unit Equivalents. Shall mean any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable or exercisable for Units, and any option, warrant or other right to subscribe for, purchase or acquire Units.

Unreturned Capital Contributions. Shall mean, with respect to a Member, such Member's Capital Contributions, minus the aggregate Distributions to such Member under this Agreement under Section 9.3(b)(i).

EXHIBIT A

MEMBERS' NAMES, CONTRIBUTIONS,

MEMBERSHIP UNITS AND UNIT PERCENTAGES

As of August 12, 2020

Member Name	Address	Initial Capital Contribution	Units	Total Unit Percentages
Trigrow Systems, Inc.	101 Middlesex Turnpike, Suite 6, PMB 326, Burlington, MA 01803 Attention: Legal Department With a copy to: Legal@agrify.com	$500,000	750,000	75%
The Holden Company, Inc.	The Holden Company, Inc. 3504 289th Ave NE, Redmond, WA 98053-9117 Attention: Jason Whitney	Intellectual Property Assignment and Transfer Agreement effective January 1, 2020 by and between the Company and the Holden Member, whereby such intellectual property transferred and assigned from Holden Member to Company is deemed to have a fair market value of $166,667.	250,000	25%
TOTAL			1,000,000	100%

EXHIBIT B

JOINDER AGREEMENT

This Joinder Agreement ("Joinder Agreement") is executed by the undersigned as a proposed recipient of Membership Unit (the "Member") in AGRIFY BRANDS, LLC, a Nevada limited liability company (the "Company") pursuant to the terms of that certain Amended and Restated Operating Agreement dated as of August __, 2020 (the "Agreement") by and among the Members of the Company. Capitalized terms used but not defined in this Joinder Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Joinder Agreement, the Member agrees as follows:

1.1 Acknowledgement. The Member acknowledges that Member is acquiring certain Units of the Company, subject to the terms and conditions of the Agreement.

1.2 Agreement. The Member (i) agrees that the Member has acquired Units in the Company, (ii) the Units acquired by the Member shall be bound by and subject to all of the terms and conditions of the Agreement, (iii) hereby joins in and enters into the Agreement with the same force and effect as if the Member were originally a party thereto, and (iv) subject to any approvals required under the Agreement, shall thereafter be deemed to be a signatory party to the Agreement as a Member.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to the Member at the address listed beside Member's signature below.

EXECUTED AND DATED this ____ day of _____, 202__.

MEMBER:

Entity Name (if applicable):

_____

By: _____
[Name and Title]

Address: _____

_____

Accepted and Agreed to by:
AGRIFY BRANDS, LLC, a Nevada
limited liability company

By: Agrify Corporation, its Manager

_____
Niv Krikov, Chief Financial Officer

EXHIBIT C

CONSENT OF SPOUSE

_____ (the "Undersigned"), the spouse of _____ (the "Spouse") acknowledges, certifies, agrees and represents as follows:

1. The Undersigned has read the foregoing Operating Agreement of AGRIFY BRANDS, LLC a Nevada limited-liability company (the "Company"), and, among others, the Spouse and the Undersigned understand the same, and considers all of the terms and conditions of the foregoing Operating Agreement as being in the best interest of the Undersigned and intends to be legally bound hereby.

2. The Undersigned agrees that the Spouse shall, and shall continue to, have the irrevocable right, power, and authority to represent and bind the community comprised of the Undersigned and the Spouse in all matters relating to the Spouse and the Undersigned hereby appoints the Spouse as the irrevocable attorney in fact for the Undersigned for such purpose.

3. The Undersigned agrees that any interest of the Spouse in the Units (as defined in the foregoing Operating Agreement) or in any assets of the Company in which the Undersigned may have or claim to have a community property interest, or in which the Undersigned may in the future have or claim to have a community property interest, shall be governed by the terms and provisions of the Operating Agreement.

4. In the event of a divorce between the Undersigned and the Spouse, the Undersigned agrees that s/he will not, in any divorce proceeding or property settlement agreement settling community or other property rights and obligations, seek to become a legal or beneficial owner of all or any interest of the Spouse's ownership interest in the Company or in any of the assets of the Company; provided, however, the Undersigned reserves the right to one-half (½) of the value of any portion of the interest of the Spouse's ownership interest in the Company which shall constitute community property, but the Undersigned agrees to look solely to other assets owned by the community for the value of such interest.

5. The Undersigned acknowledges that s/he has been advised to obtain representation of qualified counsel of independent selection.

6. The Undersigned fully and completely understands the terms and provisions of this Agreement.

[Signature page to follow]

DATED: _____ ___, 202__

_____
Signature

STATE OF _____)
)ss.
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 202__, by _____.

_____
Notary Public

[Signature Page to Exhibit C – Consent of Spouse]

Exhibit 14.1

CODE OF ETHICS AND BUSINESS CONDUCT

OF

AGRIFY CORPORATION

Adopted: December 18, 2020

To promote the ethical conduct and integrity generally of Agrify Corporation (the "Company"), and to promote accurate, fair and timely reporting of the Company's financial results and condition and other information the Company releases to the public market and include in reports filed with the Securities and Exchange Commission (the "SEC"), all directors, officers and employees of the Company are bound by the following Code of Ethics and Business Conduct (the "Code").

1. Generally. All directors, officers and employees of the Company shall:

1.1 Act with honesty and integrity, in good faith with competence and due care, and avoid actual or apparent conflicts of interest in personal and professional relationships.

1.2 Not take advantage of business opportunities, confidential information or his or her position for personal gain.

1.3 Not compete against the Company, and deal fairly with the Company's customers, suppliers, competitors and other employees.

1.4 Provide information which promotes fair, accurate, timely and understandable disclosure in documents that the Company files with, or submits to, government agencies and in public communications.

1.5 Comply with rules and regulations of foreign, federal, state, provincial and local governments, and other private and public regulatory agencies, including insider trading laws and the Company's insider trading policy.

1.6 Proactively promote and be an example of ethical behavior.

1.7 Achieve responsible use of and control over all assets and resources employed or entrusted.

1.8 Promptly report to Richard Stamm, the Company's General Counsel / Chief Compliance Officer, any conduct that the individual believes to be or would give rise to a violation of law or business ethics or of any provision of this Code of Ethics.

2. Conflicts of Interest.

2.1 A conflict of interest occurs when an individual's private interest (or the interest of a member of his or her family) interferes, or even appears to interfere, with the interests of the Company as a whole. A conflict of interest can arise when an employee, officer or director (or a member of his or her family) takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. Conflicts of interest also arise when an employee, officer or director (or a member of his or her family) receives improper personal benefits as a result of his or her position in the Company.

2.2 Loans by the Company to, or guarantees by the Company of obligations of, employees or their family members are of special concern and could constitute improper personal benefits to the recipients of such loans or guarantees, depending on the facts and circumstances. Loans by the Company to, or guarantees by the Company of obligations of, any director or officer or their family members are expressly prohibited unless approved by the Audit Committee.

2.3 Whether or not a conflict of interest exists or will exist can be unclear. Conflicts of interest should be avoided unless specifically authorized as described in Sections 2.4 and 2.5.

2.4 Persons other than directors and executive officers who have questions about a potential conflict of interest or who become aware of an actual or potential conflict should discuss the matter with, and seek a determination and prior authorization or approval from, the Chief Compliance Officer. A supervisor may not authorize or approve conflict of interest matters or make determinations as to whether a problematic conflict of interest exists without first seeking the Chief Compliance Officer's written approval. If the supervisor is himself involved in the potential or actual conflict, the matter should instead be discussed directly with the Chief Compliance Officer.

2.5 Directors and executive officers must seek determinations and prior authorizations or approvals of potential conflicts of interest exclusively from the Audit Committee.

2.6 Any Related Party Transactions shall be considered a conflict of interest and be subject to the terms and conditions of this Section 2. "Related Party Transaction" means any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which (i) the Company or any of its subsidiaries is or will be a participant, and (ii) any person who is or was an executive officer, director or nominee for director of the Company, a shareholder owning more than 5% of any class of the company's voting securities, or an immediate family member of any such person, has or will have a direct or indirect interest. This also includes any material amendment or modification to an existing Related Party Transaction.

3. Compliance.

3.1 Employees, officers and directors should comply, both in letter and spirit, with all applicable laws, rules and regulations in the cities, states and countries in which the Company operates.

3.2 Although not all employees, officers and directors are expected to know the details of all applicable laws, rules and regulations, it is important to know enough to determine when to seek advice from appropriate personnel. Questions about compliance should be addressed to the Company's Legal Department.

3.3 No director, officer or employee may purchase or sell any Company securities while in possession of material nonpublic information regarding the Company, nor may any director, officer or employee purchase or sell another company's securities while in possession of material nonpublic information regarding that company. It is against Company policies and illegal for any director, officer or employee to use material nonpublic information (See: Company's Insider Trading Policy) regarding the Company or any other company to:

(a) obtain profit for himself or herself; or

(b) directly or indirectly "tip" others who might make an investment decision on the basis of that information.

4. Disclosure.

4.1 The Company's periodic reports and other documents filed with the SEC, including all financial statements and other financial information, must comply with applicable federal securities laws and SEC rules.

4.2 Each director, officer and employee who contributes in any way to the preparation or verification of the Company's financial statements and other financial information must ensure that the Company's books, records and accounts are accurately maintained. Each director, officer and employee must cooperate fully with the Company's accounting and internal audit departments, as well as the Company's independent public accountants and counsel.

4.3 Each director, officer and employee who is involved in the Company's disclosure process must:

(a) be familiar with and comply with the Company's disclosure controls and procedures and its internal control over financial reporting; and

(b) take all necessary steps to ensure that all filings with the SEC and all other public communications about the financial and business condition of the Company provide full, fair, accurate, timely and understandable disclosure.

5. Protection and Proper Use of Company Assets.

5.1 All directors, officers and employees should protect the Company's assets and ensure their efficient use.

5.2 All Company assets should be used only for legitimate business purposes. Any suspected incident of fraud or theft should be reported to the Chief Compliance Officer for investigation immediately.

5.3 The obligation to protect Company assets includes the Company's proprietary information. Proprietary information includes intellectual property such as trade secrets, patents, trademarks, and copyrights, as well as business and marketing plans, engineering and manufacturing ideas, designs, databases, records and any nonpublic financial data or reports. Unauthorized use or distribution of this information is prohibited and could also be illegal and result in civil or criminal penalties.

6. Confidential Information.

6.1 Directors, officers, and employees who have received or have access to confidential information must keep this information confidential. "Confidential information" includes non-public information that might be of use to competitors or harmful to the Company or its suppliers, vendors or partners if disclosed, such as business, marketing and service plans, financial information, product development, manufacturing, databases, customer lists, pricing strategies, personnel data, personally identifiable information pertaining to our employees or other individuals (including, for example, names, addresses, telephone numbers and social security numbers), and similar types of information provided to us by our customers, suppliers and partners.

6.2 Directors, officers, and employees must must treat non-public, confidential information of other companies in the same manner as required for the Company's confidential information, which may include the fact that the Company has an interest in, or is involved with, another company.

6.3 The duties under this Section 6 survive unless and until that confidential information is released to the public through approved channels (usually through a press release, an SEC filing or a formal communication from a member of senior management, as further described below). This policy requires that directors, officers, and employees refrain from discussing confidential or proprietary information with outsiders and even with other Company employees, unless those fellow employees have a legitimate need to know the information in order to perform their jobs' duties. Unauthorized use or distribution of this information may be illegal and result in civil liability and/or criminal penalties.

6.4 Materials that contain confidential information, such as memos, notebooks, computer disks and laptop computers, must be stored securely. Unauthorized posting or discussion of any information concerning the Company's business, information or prospects on the Internet is prohibited. You may not discuss the Company's business, information or prospects on the Internet. Be cautious when discussing sensitive information in public places like elevators, airports, restaurants and "quasi-public" areas within the Company, or in and around the Company's facilities. All Company emails, voicemails and other communications are presumed confidential and should not be forwarded or otherwise disseminated outside of the Company, except where required for legitimate business purposes.

7. Corporate Opportunities. All directors, officers and employees owe a duty to the Company to advance its interests when the opportunity arises. Directors, officers and employees are prohibited from taking for themselves personally (or for the benefit of friends or family members) opportunities that are discovered through the use of Company assets, property, information or position. Directors, officers and employees may not use Company assets, property, information or position for personal gain (including gain of friends or family members). In addition, no director, officer or employee may compete with the Company.

8. Fair Dealing. Each director, officer and employee must deal fairly with the Company's customers, suppliers, partners, service providers, competitors, employees and anyone else with whom he or she has contact in the course of performing his or her job. No director, officer or employee may take unfair advantage of anyone through manipulation, concealment, abuse or privileged information, misrepresentation of facts or any other unfair dealing practice.

9. Reporting and Enforcement.

9.1 Actions prohibited by this Code involving directors or executive officers must be reported to the General Counsel / Chief Compliance Officer, or directly to the Audit Committee as appropriate.

9.2 Actions prohibited by this Code involving anyone other than a director or executive officer must be reported to such employee's supervisor, or if an employee is uncomfortable speaking with his or her supervisor or believes his or her supervisor has not properly handled his or her concern or is involved in the Violation, directly to the General Counsel / Chief Compliance Officer.

9.3 After receiving a report of an alleged prohibited action, the Company must promptly take all appropriate actions necessary to investigate. All directors, officers and employees are expected to cooperate in any internal investigation of misconduct.

9.4 All directors, officers, and employees shall report to the Company their compliance with this Policy and any conflicts of interest at least annually.

10. Enforcement. Following Investigation and a determination that there has been a violation of this Code, the Company will take such preventative or disciplinary action as it deems appropriate, including, but not limited to, reassignment, demotion, dismissal and, in the event of criminal conduct or other serious violations of the law, notification of appropriate governmental authorities.

11. Prohibition on Retaliation. The Company does not tolerate acts of retaliation against any director, officer or employee who makes a good faith report of known or suspected acts of misconduct or other violations of this Code.

ACKNOWLEDGMENT OF RECEIPT AND REVIEW

To be signed and returned to the Chief Compliance Officer.

I, _____, acknowledge that I have received and read a copy of Agrify Code of Ethics and Business Conduct. I understand the contents of the Code and I agree to comply with the policies and procedures set out in the Code.

Unless otherwise attached hereto, I confirm and acknowledge that I have no conflicts of interest.

I understand that I should approach the Chief Compliance Officer if I have any questions about the Code generally or any questions about reporting a suspected conflict of interest or other violation of the Code.

Signature

Printed Name

Date

Exhibit 23.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the inclusion in this Registration Statement of Agrify Corporation on Form S-1, which includes an explanatory paragraph as to the Company's ability to continue as a Going Concern, of our report dated March 19, 2020, with respect to our audits of the consolidated financial statements of Agrify Corporation and Subsidiary as of December 31, 2019 and 2018 and for the years ended December 31, 2019 and 2018, which report appears in the Prospectus, which is part of this Registration Statement. We also consent to the reference to our Firm under the heading "Experts" in such Prospectus.

/s/ Marcum LLP

Marcum LLP

Melville, NY
December 22, 2020