

## MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “**Agreement**”), dated as of December 15, 2022 (the “**Execution Date**”), is entered into by and among Seth A. Stockmeister, an individual, David L. Johns, an individual, Charles M. Fields, an individual, Kevin L. Lykens, an individual, Ryan K. Wright, an individual, Michael J. Shawd, an individual, Michael W. Redd, an individual, Walter E. Dennis, Jr., an individual, Robert A. Munn, an individual, and Alan Stockmeister, an individual (collectively the “**Sellers**” and each, individually, a “**Seller**”), David L. Johns, as Sellers’ Representative, and Vapen Ohio, LLC, an Ohio limited liability company (“**Buyer**”).

### RECITALS

WHEREAS, Vapen, LLC, the Buyer and in APP1803, LLC, an Ohio limited liability company (“**APP1803**”) have entered into an Assignment and Loan Termination Agreement (the “**Assignment and Loan Termination Agreement**”) on the Execution Date pursuant to which, among other things, the Buyer acquired 48% of the issued and outstanding membership interests in APP1803;

WHEREAS, the Sellers collectively own the remaining 52% of the issued and outstanding membership interests (the “**APP1803 Interests**”) in APP1803;

WHEREAS, APP1803 Interests are the only membership interests or other equity interests issued and outstanding in APP1803, except for the 48% acquired by Buyer pursuant to the Assignment and Loan Termination Agreement; and

WHEREAS, Sellers wish to sell to Buyer, and Buyer wishes to purchase from each Seller, the APP1803 Interests owned by each Seller, subject to the terms and conditions set forth herein;

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 1 DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms have the meanings specified or referred to in this **ARTICLE 1**:

“**Acquisition Proposal**” has the meaning set forth in Section 5.03(a).

“**Act**” has the meaning set forth in Section 5.08.

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

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the

possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

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

“**Ancillary Documents**” means the Assignments, the CannAscend Assignment, the Buyer Parent Board and Officer Appointment Agreement, the Initial Promissory Notes, and the Closing Promissory Notes.

“**Annual Financial Statements**” has the meaning set forth in Section 3.06.

“**APP1803**” has the meaning set forth in the recitals.

“**APP1803 Interests**” has the meaning set forth in the recitals.

“**Application Costs**” has the meaning set forth in Section 5.05(a).

“**Assignment**” has the meaning set forth in Section 2.05(b)(i)(A).

“**Assignment and Loan Termination Agreement**” has the meaning set forth in the recitals.

“**Basket**” has the meaning set forth in Section 8.04(a).

“**Benefit Plan**” has the meaning set forth in Section 3.20(a).

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Columbus, Ohio or Vancouver, British Columbia are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Fundamental Representations**” has the meaning set forth in Section 7.03(a).

“**Buyer Indemnitees**” has the meaning set forth in Section 8.02.

“**Buyer Parent**” means Vext Science, Inc.

“**Buyer Parent Share Allocation**” means the Buyer Parent Share allocation set out in Exhibit “A”.

“**Buyer Parent Shares**” means the common shares in the capital of Buyer.

“**Canadian Securities Laws**” means all applicable Canadian provincial securities Laws, including the rules, regulations and policies promulgated thereunder, together with applicable published fee schedules, prescribed forms, policy statements, multilateral and national instruments, orders, rulings (including blanket rulings), notices and other regulatory instruments of the Canadian Securities Regulators in each applicable jurisdiction, but for certainty, not

including the policies of the Canadian Securities Exchange or the rules, regulations or policies of any other stock exchange.

**“Canadian Securities Regulators”** means, collectively, the securities commissions or other securities regulatory authorities in each of the applicable provinces and territories of Canada.

**“CannAscend Dispensary”** means the medical marijuana dispensary located at 2950 East Main Street, Columbus, Ohio 43209.

**“Cannabis Inventory”** means bagged inventory of flower, trim, manufactured cannabis products and any other cannabis materials in possession or under the control of APP1803 at any time, and from time to time, in each case as shown on APP1803’s METRC reports and ready for sale to dispensaries.

**“Cap”** has the meaning set forth in Section 8.04(a).

**“Cash Consideration”** has the meaning set forth in Section 2.02(b).

**“Cash Consideration Allocation”** means the Cash Consideration allocation set out in Exhibit “A”.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

**“Closing”** has the meaning set forth in Section 2.06.

**“Closing Date”** has the meaning set forth in Section 2.06.

**“Closing Promissory Note Allocation”** means the Closing Promissory Note principal allocation set out in Exhibit “A”.

**“Closing Promissory Notes”** means the unsecured promissory notes for a principal amount of \$3,738,397.74, as adjusted in accordance with the terms thereof, issued on the earlier of January 1, 2023 and the Closing Date, in favour of the Sellers in the form set out in Exhibit “C”.

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

**“Company Intellectual Property”** means all Intellectual Property that is owned by APP1803.

**“Company IP Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to Intellectual Property to which APP1803 is a party, beneficiary or otherwise bound.

**“Company IP Registrations”** means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing.

**“Company IT Systems”** means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by APP1803.

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

**“Current Liabilities”** means accounts payable, accrued Taxes and accrued expenses, but excluding (a) accounts payable to any of APP1803’s Affiliates, or any of the managers, directors, employees, officers or equityholders of APP1803 or its Affiliates, (b) Transaction Expenses and (c) the current portion of any Indebtedness of APP1803, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such accounts were being prepared as of a fiscal year end.

**“Department”** has the meaning set forth in the recitals

**“Department Consent”** has the meaning set forth in Section 7.01(b).

**“Direct Claim”** has the meaning set forth in Section 8.05(c).

**“Disclosure Schedules”** means the Disclosure Schedules delivered by Sellers’ Representative, on behalf of Sellers, and by Buyer concurrently with the execution and delivery of this Agreement.

**“Dollars or \$”** means the lawful currency of the United States.

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

**“Enforceability Exceptions”** has the meaning set forth in Section 3.01.

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

**“Environmental Law”** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

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

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

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

**“ERISA Affiliate”** means all employers (whether or not incorporated) that would be treated together with APP1803 or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

**“Escrowed Shares”** has the meaning set forth in Section 2.08(a).

**“Execution Date”** has the meaning set forth in the preamble.

**“Federal Cannabis Laws”** means any U.S. federal laws, civil, criminal or otherwise, as such relate, either directly or indirectly, to the cultivation, harvesting, production, distribution, processing, marketing, use, sale or possession of cannabis, marijuana or related substances or products containing or relating to the same, including, without limitation, the prohibition on drug trafficking under 21 U.S.C. § 841, et seq., the conspiracy statute under 18 U.S.C. § 846, the bar against aiding and abetting the conduct of an offense under 18 U.S.C. § 2, the bar against misprision of a felony (concealing another’s felonious conduct) under 18 U.S.C. § 4, the bar against being an accessory after the fact to criminal conduct under 18 U.S.C. § 3, and federal money laundering statutes under 18 U.S.C. §§ 1956, 1957, and 1960 and the regulations and rules promulgated under any of the foregoing.

**“Financial Statements”** has the meaning set forth in Section 3.06.

**“First Cash Consideration Installment”** means the Cash Consideration allocation to be paid on the Execution Date as set out in Exhibit “A”.

**“GAAP”** means United States generally accepted accounting principles as recognized by the Financial Accounting Standards Board 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, including the Department.

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

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

**“Indebtedness”** means, without duplication and with respect to APP1803, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments, (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by APP1803 on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

**“Indemnified Party”** has the meaning set forth in Section 8.05.

**“Indemnifying Party”** has the meaning set forth in Section 8.05.

**“Independent Accountant”** means a nationally recognized certified public accounting firm that has not performed any substantial accounting, tax or auditing services for the Buyer, APP1803, the Sellers or their respective Affiliates for the past three years.

**“Initial Promissory Note Allocation”** means the Initial Promissory Note principal allocation set out in Exhibit “A”.

**“Initial Promissory Notes”** means the unsecured promissory note for a principal amount of \$1,410,478.99, as adjusted in accordance with the terms thereof, issued on the date hereof in favour of the Sellers in the form set out in Exhibit “B”.

**“Insurance Policies”** has the meaning set forth in Section 3.16.

**“Intellectual Property”** means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing,

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

“**Knowledge of Sellers or Sellers’ Knowledge**” or any other similar knowledge qualification, means the actual knowledge of any of the Sellers.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority, but excluding, in each case, Federal Cannabis Laws.

“**Liabilities**” has the meaning set forth in Section 3.07.

“**Licensed Intellectual Property**” means all Intellectual Property in which APP1803 holds any rights or interests granted by other Persons, including any Seller or any Affiliates of any Seller.

“**Losses**” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any Third Party Recovery Proceeds; *provided, however*, that “Losses” shall not include (a) loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity or (b) any punitive or exemplary damages or any consequential, indirect, incidental or similar damages, in each case of (a) or (b), except to the extent such damages are awarded to a third party pursuant to a Governmental Order in connection with a Third Party Claim.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of APP1803, taken as a whole, or (b) the ability of any Seller to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in

which APP1803 operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) national or international political or social conditions, including earthquakes or other natural disasters and pandemics; (vi) any changes in applicable Laws; (vii) any amendment that becomes effective after the date of this Agreement to GAAP; or (viii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (vii) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on APP1803 compared to other participants in the industries in which APP1803 conducts business.

“**Material Contracts**” has the meaning set forth in Section 3.09(a).

“**METRC**” means METRC LLC’s Marijuana Enforcement Tracking Reporting and Compliance system as adopted and used pursuant to the Laws of the State of Ohio.

“**Organizational Documents**” means (a) in the case of a Person that is a corporation, its articles or certificate of incorporation and its by-laws, regulations or similar governing instruments required by the laws of its jurisdiction of formation or organization; (b) in the case of a Person that is a partnership, its articles or certificate of partnership, formation or association, and its partnership agreement (in each case, limited, limited liability, general or otherwise); (c) in the case of a Person that is a limited liability company, its articles or certificate of formation or organization, and its limited liability company agreement or operating agreement; and (d) in the case of a Person that is none of a corporation, partnership (limited, limited liability, general or otherwise), limited liability company or natural person, its governing instruments as required or contemplated by the laws of its jurisdiction of organization.

“**Outside Date**” means the date that is 180 days after the date of this Agreement, as extended pursuant to Section 9.01(b)(ii); *provided, however*, that if Buyer has not submitted all Regulatory Filings on or prior to the Regulatory Filing Deadline pursuant to Section 5.05(a) then, at the option of Sellers, the “Outside Date” shall be the day following the Regulatory Filing Deadline.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Permitted Encumbrances**” has the meaning set forth in Section 3.10(a).

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

“**Platform Agreements**” has the meaning set forth in Section 3.12(g).

“**Pre-Closing Audit**” has the meaning set forth in Section 6.05.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any Straddle Period, the portion of such taxable period beginning after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such taxable period ending on and including the Closing Date.

“**Pre-Closing Taxes**” means Taxes of APP1803 for any Pre-Closing Tax Period.

“**Pro Rata Percentage**” means the proportionate ownership amounts set out in Exhibit “A”

“**Purchase Agreements**” has the meaning set forth in the recitals.

“**Purchase Price**” has the meaning set forth in Section 2.02.

“**Purchase Price Allocation**” has the meaning set forth in Section 6.07.

“**Purchased Companies**” has the meaning set forth in the recitals.

“**Qualified Benefit Plan**” has the meaning set forth in Section 3.20(b).

“**Regulatory Approvals**” has the meaning set forth in Section 5.05(a).

“**Regulatory Filings**” has the meaning set forth in Section 5.05(a).

“**Regulatory Filing Deadline**” has the meaning set forth in Section 5.05(a).

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

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

“**Section 280E**” means Section 280E of the Code.

“**Second Cash Consideration Installment**” means the Cash Consideration allocation to be paid on the Second Cash Consideration Installment Date as set out in Exhibit “A”.

“**Second Cash Consideration Installment Date**” means December 23, 2022, or such other date as the Buyer and the Sellers’ Representative may agree.

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

“**Seller**” has the meaning set forth in the preamble.

“**Seller Indemnitees**” has the meaning set forth in Section 8.03.

“**Sellers’ Fundamental Representations**” has the meaning set forth in Section 7.02(a).

“**Sellers’ Representative**” has the meaning set forth in Section 10.12(a).

“**Share Consideration**” has the meaning set forth in Section 2.02(a).

“**Straddle Period**” has the meaning set forth in Section 6.04.

“**Tax Claim**” has the meaning set forth in Section 6.05.

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

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

“**Third Cash Consideration Installment**” means the Cash Consideration allocation to be paid on the Third Cash Consideration Installment Date as set out in Exhibit “A”.

“**Third Cash Consideration Installment Date**” means January 6, 2023, or such other date as the Buyer and the Sellers’ Representative may agree.

“**Third Party Claim**” has the meaning set forth in Section 8.05(a).

“**Third Party Recovery Proceeds**” has the meaning set forth in Section 8.06(c).

“**Transaction Expenses**” means all fees and expenses incurred by APP1803 or any Seller at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions contemplated hereby and thereby.

“**Union**” has the meaning set forth in Section 3.21(b).

## **ARTICLE 2 PURCHASE AND SALE**

**Section 2.01 Purchase and Sale.** Subject to the terms and conditions set forth herein, at the Closing, each Seller shall sell to Buyer, and Buyer shall purchase from each Seller, all of each Seller’s right, title, and interest in and to such Seller’s APP1803 Interests, free and clear of all Encumbrances, for the consideration specified in Section 2.02.

**Section 2.02 Purchase Price.** The aggregate purchase price (the “**Purchase Price**”) for the APP1803 Interests shall be:

- (a) 4,887,898 Buyer Parent Shares (the “**Share Consideration**”);
- (b) \$1,297,323.27 of the Purchase Price (the “**Cash Consideration**”) shall be paid by the Buyer to Sellers in cash; and
- (c) \$1,410,478.99 principal amount of Initial Promissory Notes; and
- (d) \$3,738,397.74 principal amount of Closing Promissory Notes,

payable as set forth in Section 2.03, Section 2.04 and Section 2.05.

**Section 2.03 Transactions to be Effected at Execution of this Agreement.**

- (a) On the Execution Date, Buyer shall:
  - (i) deliver to each Seller, a number of Buyer Parent Shares in accordance with each Seller’s Buyer Parent Share Allocation, registered in accordance with instructions provided in writing by each Seller to Buyer on or before the Execution Date, which Buyer Parent Shares shall be held in escrow by Buyer in accordance with the terms and conditions set out in Section 2.08;
  - (ii) pay to each Seller, such Seller’s respective First Cash Consideration Installment, by wire transfer of immediately available funds to an account designated in writing by each Seller to Buyer on or prior to the Execution Date; and
  - (iii) deliver to each Seller, an Initial Promissory Note in accordance with each Seller’s Initial Promissory Note Allocation.
- (b) On the Execution Date, Seller’s Representative shall deliver to Buyer Accredited Investor Certificates, duly completed and executed by each Seller entitled to receive Buyer Parent Shares, Initial Promissory Notes or Closing Promissory Notes hereunder, in the form set out in Exhibit “D”, dated as of the Execution Date; and
- (c) On the Execution Date, APP1803 shall:
  - (i) deliver to Gordon Bibart, LLC [Redacted: Confidential Information] as full payment for prior services as described in the Disclosure Schedules.

**Section 2.04 Transactions to be Effected Following the Execution Date.**

- (a) On the Second Cash Consideration Installment Payment Date, Buyer shall pay to each Seller such Seller’s respective Second Cash Consideration Installment, by wire transfer of immediately available funds to the account designated in Section 2.03(a)(ii); and

(b) On the Third Cash Installment Payment Date, Buyer shall pay to each Seller such Seller's respective Third Cash Consideration Installment, by wire transfer of immediately available funds to the account designated in Section 2.03(a)(ii).

(c) On the earlier of January 1, 2023 and the Closing Date, Buyer shall deliver to each Seller, a Closing Promissory Note in accordance with each Seller's Closing Promissory Note Allocation.

**Section 2.05 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall deliver to the Sellers' Representative, the Ancillary Documents to which the Buyer is a party, and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 7.03.

(b) At the Closing, Sellers' Representative shall:

(i) deliver to Buyer:

(A) from each Seller, an assignment of each Seller's APP1803 Interests to Buyer in form and substance satisfactory to Buyer (each, an "**Assignment**"), duly executed by each Seller; and

(B) the other Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Sellers or the Sellers' Representative at or prior to the Closing pursuant to Section 7.02.

**Section 2.06 Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the APP1803 Interests contemplated hereby shall take place at a closing (the "**Closing**") to be held at 10:00 a.m., Columbus, Ohio time, within two (2) Business Days after the later of (i) the last of the conditions to Closing set forth in ARTICLE 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date); and (ii) the conditions precedent to closing that certain purchase agreement with even date hereof of Buyer to purchase 100% of the membership interests of Appalachian Pharm Products, LLC have been satisfied (other than conditions which, by their nature, are to be satisfied on the closing thereof), remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time or on such other date as Sellers' Representative and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**"). For purposes of this Agreement, the Closing shall be deemed to have occurred at 12:01 a.m., Columbus, Ohio time on the Closing Date.

**Section 2.07 Withholding Tax.** Buyer and APP1803 shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement all Taxes that Buyer or APP1803 may be required to deduct and withhold under any provision of Tax Law. Buyer shall give each Seller advance written notice of any intention to deduct or withhold any such amounts and the legal basis therefor, and shall use commercially reasonable efforts to afford such Seller the opportunity to provide Buyer, prior to the applicable payment, documents and forms necessary to eliminate or reduce such deduction or withholding. All such withheld amounts shall be treated as delivered to Sellers hereunder.

### **Section 2.08 Escrow.**

(a) The Sellers agree with Buyer that all Buyer Parent Shares issued to each Seller pursuant to Section 2.03(a)(i) (the “**Escrowed Shares**”) shall be held in escrow by Buyer and released in accordance with the terms of this Section 2.08. Any costs associated with the escrow described in this Section 2.08 shall be the responsibility of the Buyer.

(b) Buyer shall release the Escrowed Shares as follows:

- (i) If Sellers deliver a notice to Buyer, executed by Sellers, certifying that all conditions to Closing set forth in ARTICLE 7 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) on or before the Outside Date and such notice is accepted as indicated by Buyer’s execution of such notice, promptly following the date that is four months and a day from the Closing Date, Buyer shall deliver the Escrowed Shares to the Sellers in accordance with the registration instructions provided by Sellers pursuant to Section 2.03(a)(i); and
- (ii) If the conditions set out in Section 2.08(b)(i) have not been satisfied by the Outside Date, Buyer shall promptly release the Escrowed Shares to Buyer Parent for cancellation and Sellers shall have no further right to the Escrowed Shares or interest therein for any purpose.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules (in the form delivered as of the date hereof and as of the Closing, as applicable), which exceptions shall be deemed to be part of the representations and warranties made hereunder, each Seller represents and warrants to Buyer that the statements contained in this ARTICLE 3 are true and correct as of the date hereof and as of the Closing.

**Section 3.01 Authority of Sellers.** Such Seller is (i) an individual and resident of the state listed in the Preamble of this Agreement; or (ii) a limited liability company duly organized, validly and in good standing under the Laws of its jurisdiction of incorporation, as applicable. Such Seller has the full legal capacity to enter into this Agreement and the Ancillary Documents to which he is a party, to carry out his obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by such Seller, and (assuming due authorization, execution, and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar Laws and equitable principles affecting creditors’ rights and remedies generally (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity) and (iii) Federal Cannabis Laws (collectively, the “**Enforceability Exceptions**”). When each Ancillary Document to which such Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution, and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of such Seller enforceable against such Seller in accordance with its terms, subject to the Enforceability Exceptions.

**Section 3.02 Organization, Authority and Qualification of APP1803.** APP1803 is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Ohio and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02 of the Disclosure Schedules sets forth each jurisdiction in which APP1803 is licensed or qualified to do business, and APP1803 is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary. All limited liability company actions taken by APP1803 in connection with this Agreement and the other Ancillary Documents will be duly authorized on or prior to the Closing. APP1803 has full limited liability company power and authority to enter into each Ancillary Document to which APP1803 is a party, to carry out APP1803's obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery by APP1803 of each Ancillary Document to which APP1803 is a party, the performance by APP1803 of its obligations thereunder, and the consummation by APP1803 of the transactions contemplated thereby have been duly authorized by all requisite limited liability company action on the part of APP1803. When each Ancillary Document to which APP1803 is or will be a party has been duly executed and delivered by APP1803 (assuming due authorization, execution, and delivery by each other party thereto, other than any Seller), such Ancillary Document will constitute a legal and binding obligation of APP1803 enforceable against it in accordance with its terms, subject to the Enforceability Exceptions.

**Section 3.03 Capitalization.**

(a) Sellers are the record owner of and have good and valid title to the APP1803 Interests set forth opposite each Seller's name in Section 3.03(a) of the Disclosure Schedules, free and clear of all Encumbrances. Such APP1803 Interests constitute one hundred percent (100%) of the total issued and outstanding membership interests and other equity interests in APP1803, except for the 48% of APP1803 presently owned by Buyer or its affiliates. The APP1803 Interests have been duly authorized and are validly issued.

(b) APP1803 Interests were issued in compliance with applicable Laws. APP1803 Interests were not issued in violation of the Organizational Documents of APP1803 or any other agreement, arrangement, or commitment to which any Seller or APP1803 is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

(c) The acquisition of 48% of the membership interests of APP1803 by Buyer pursuant to the Assignment and Loan Termination Agreement complied with applicable Laws and did not violate the Organizational Documents of APP1803 or any other agreement, arrangement, or commitment to which any Seller or APP1803 is a party and was not subject to or in violation of any preemptive or similar rights of any Person.

(d) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any membership interests or other equity interests in APP1803 or obligating any Seller or APP1803 to issue or sell any membership interests or other equity interests (including the APP1803 Interests), or any other interest, in APP1803. Other than the Organizational Documents of APP1803 as in

force as of the date of this Agreement, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the APP1803 Interests.

**Section 3.04 No Subsidiaries.** APP1803 does not own, or have any interest in any equity or have an ownership interest in any other Person.

**Section 3.05 No Conflicts; Consents.**

(a) The execution, delivery and performance by each Seller of this Agreement and each Seller and APP1803 of the Ancillary Documents to which each Seller or APP1803 is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of APP1803, or in the case of a Seller that is not an individual, the Organizational Documents of the Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Seller or APP1803; (c) except as set forth in Section 3.05 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which any Seller or APP1803 is a party or by which any Seller or APP1803 is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of APP1803; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of APP1803. Except as set forth in Section 3.05 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any Seller or APP1803 in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by APP1803 of the Assignment and Loan Termination Agreement, and the consummation of the transactions contemplated thereby, did not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of APP1803, (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to APP1803; (c) except as set forth in Section 3.05 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which APP1803 is a party or by which APP1803 is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of APP1803; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of APP1803. Except as set forth in Section 3.05 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority was required by or with respect to APP1803 in connection with the execution and delivery of the Assignment and Loan Termination Agreement thereby.

**Section 3.06 Financial Statements.** The majority of expenditures for APP1803 have occurred through loans obtained from Buyer, or have been loans to CannAscend Ohio Columbus, L.L.C. through its revolving line of credit. Buyer is in possession of all such expenditures made thereunder. Buyer has provided Sellers with such financial data which are attached as an exhibit to Section 3.06 of the Disclosure Schedules (all such documents attached being the “**Financial Statements**”). The Sellers have reviewed the Financial Statements which on their face, together with the additional disclosures under Section 3.07 of the Disclosure Schedules, fairly present in all material respects the financial condition of APP1803 as of the respective dates they were prepared and the consolidated results of the operations of APP1803 for the periods indicated (September 30, 2022 is referred to herein as the “**Financial Statement Date**”).

**Section 3.07 Undisclosed Liabilities.** APP1803 does not have any liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise (“**Liabilities**”) of a type required to be reflected on a balance sheet prepared in accordance with GAAP, except (a) those which are adequately reflected or reserved against in the Financial Statements as of the Financial Statement Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Financial Statement Date, (c) those disclosed in Section 3.07 of the Disclosure Schedules.

**Section 3.08 Absence of Certain Changes, Events, and Conditions.** Since the Financial Statement Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to APP1803, any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the Organizational Documents of APP1803;
- (c) split, combination or reclassification of any membership interests or other equity interests in APP1803;
- (d) issuance, sale or other disposition of, or creation of any Encumbrance on, any membership interests or other equity interests in APP1803, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any membership interests or other equity interests in APP1803;
- (e) declaration or payment of any distributions on or in respect of any membership interests or other equity interests in APP1803 or redemption, purchase or acquisition of any of APP1803’s outstanding membership interests or other equity interests;
- (f) material change in any method of accounting or accounting practice of APP1803, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) material change in APP1803’s cash management practices or APP1803’s policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

- (h) entry into any Contract that would constitute a Material Contract;
- (i) incurrence, assumption or guarantee of any Indebtedness;
- (j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Financial Statements or cancellation of any debts or entitlements;
- (k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Company IP Agreements;
- (l) abandonment or lapse of or failure to maintain in full force and effect any Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in Company Intellectual Property;
- (m) material damage, destruction or loss (whether or not covered by insurance) to APP1803's property;
- (n) capital investment in, or any loan to, any other Person;
- (o) acceleration, termination, material modification to or cancellation of any Material Contract;
- (p) material capital expenditures;
- (q) imposition of any Encumbrance upon any of APP1803's properties or assets, tangible or intangible, other than Permitted Encumbrances;
- (r) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, managers, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed \$25,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, manager, independent contractor or consultant;
- (s) hiring or promoting any person as or to (as the case may be) an officer or manager or, except to fill a vacancy in the ordinary course of business, hiring or promoting any employee below officer or manager;
- (t) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, manager, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;
- (u) loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its members or current or former managers, officers or employees;
- (v) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(w) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$25,000, individually (in the case of a lease, per annum) or \$100,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets, stock or other equity of, or by any other manner, any business or any Person or any division thereof;

(z) action by APP1803 or any Seller to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of materially increasing the Tax Liability or materially reducing any Tax asset of APP1803 or Buyer in respect of any Post-Closing Tax Period; or

(aa) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

### **Section 3.09 Material Contracts.**

(a) Section 3.09(a) of the Disclosure Schedules lists each of the following Contracts of APP1803 (such Contracts being “**Material Contracts**”):

- (i) each Contract involving aggregate consideration in excess of \$25,000 and which, in each case, cannot be cancelled by APP1803 without penalty or without more than ninety (90) days’ notice;
- (ii) all Contracts that require APP1803 to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;
- (iii) all Contracts that provide for the indemnification by APP1803 of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(b) all Contracts that relate to the acquisition or disposition of any business, a material amount of equity or assets of any other Person or any real property (whether by merger, sale of stock or other equity interests, sale of assets or otherwise);

- (i) all broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

- (ii) all employment agreements, staffing agreements, managed services agreements, and Contracts with independent contractors or consultants (or similar arrangements);
- (iii) except for Contracts relating to trade receivables, all Contracts relating to Indebtedness of APP1803;
- (iv) all Contracts that limit or purport to limit the ability of APP1803 to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (v) any Contracts that provide for any joint venture, partnership or similar arrangement by APP1803;
- (vi) each Contract for management services or financial advisory services; and
- (vii) any other Contract that is material to APP1803 and not previously disclosed pursuant to this Section 3.09(a).

(c) Each Material Contract is valid and binding on APP1803 in accordance with its terms and is in full force and effect, and shall remain in full force and effect following the Closing. Neither APP1803 nor, to Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. To Sellers' Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments, and supplements thereto and waivers thereunder) have been made available to Buyer.

### **Section 3.10 Title to Assets; Real Property.**

(a) APP1803 has good and valid title to, or a valid leasehold interest in, all real property and personal property and other assets used in connection with the business of APP1803 or reflected in the Annual Financial Statements or acquired after the Financial Statement Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Financial Statement Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

- (i) liens for Taxes not yet due and payable;
- (ii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of APP1803;

- (iii) easements, rights of way, zoning ordinances and other similar encumbrances which are not, individually or in the aggregate, material to the business of APP1803; or
- (iv) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of APP1803.

**Section 3.11 Condition and Sufficiency of Assets.** Except as set forth in Section 3.11 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of APP1803 is structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by APP1803, together with all other properties and assets of APP1803, are sufficient for the continued conduct of APP1803's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of APP1803 as currently conducted.

**Section 3.12 Intellectual Property.**

(a) APP1803 has no Company IP Registrations and no proprietary Software. Section 3.12(a) of the Disclosure Schedules contains a correct, current, and complete list of: (i) all unregistered Trademarks included in Company Intellectual Property and (ii) all other Company Intellectual Property used or held for use in APP1803's business as currently conducted and as proposed to be conducted. Company Intellectual Property is sufficient in all respects for APP1803 to operate its business in accordance with all applicable Laws.

(b) Section 3.12(b) of the Disclosure Schedules contains a correct, current and complete list of all Company IP Agreements, specifying for each the date, title, and parties thereto, and separately identifying Company IP Agreements: (i) under which APP1803 is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property; (ii) under which APP1803 is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to APP1803's ownership or use of Intellectual Property, in each case identifying the Intellectual Property covered by such Company IP Agreement. Sellers have provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on APP1803 in accordance with its terms and is in full force and effect. Neither APP1803 nor, to the Knowledge of Sellers', any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) Except as set forth in Section 3.12(c) of the Disclosure Schedules, APP1803 is the sole and exclusive legal and beneficial owner of, and has the valid and enforceable right to use, all other Intellectual Property used or held for use in or necessary for the conduct of APP1803's business as currently conducted and as proposed to be conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, APP1803's right to own or use any Company Intellectual Property or Licensed Intellectual Property.

(e) The conduct of APP1803's business as currently and formerly conducted and as proposed to be conducted, including the use of Company Intellectual Property and Licensed Intellectual Property in connection therewith, and the products, processes and services of APP1803, have not infringed, misappropriated or otherwise violated, and to the Sellers' Knowledge will not infringe, misappropriate or otherwise violate, the Intellectual Property rights of any Person. To the Knowledge of Sellers', no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property or Licensed Intellectual Property.

(f) There are no Actions (including any opposition, cancellation, revocation, review or other proceeding), whether settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation or other violation by APP1803 of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability or ownership of any Company Intellectual Property or Licensed Intellectual Property or APP1803's right, title, or interest in or to any Company Intellectual Property or Licensed Intellectual Property; or (iii) by APP1803 or by the owner of any Licensed Intellectual Property alleging any infringement, misappropriation, or other violation by any Person of Company Intellectual Property or such Licensed Intellectual Property. No Seller is aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. APP1803 is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property or Licensed Intellectual Property.

(g) Section 3.12(g) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used in APP1803's business. APP1803 has complied with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to its use of any social media platforms, sites, or services (collectively, "**Platform Agreements**"). There are no Actions, whether settled, pending, or, to the Sellers' Knowledge, threatened, alleging any (A) breach or other violation of any Platform Agreement by APP1803; or (B) defamation, violation of publicity rights of any Person, or any other violation by APP1803 in connection with its use of social media.

(h) All Company IT Systems are sufficient for the operation of APP1803's business as currently conducted and as proposed to be conducted. APP1803 has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(i) APP1803 has complied with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of APP1803's business. In the past five (5) years, APP1803 has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning APP1803's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and to Sellers' Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

**Section 3.13 Inventory.** All inventory of APP1803, whether or not reflected in the Financial Statements, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for stale, spoiled, obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by APP1803 free and clear of all Encumbrances, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are reasonable in the present circumstances of APP1803. All Cannabis Inventory is, and at all times since being acquired by APP1803 has been, in the possession and under the control of APP1803 in accordance with applicable Law.

**Section 3.14 Accounts Receivable.** The accounts receivable reflected on the Financial Statements, and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by APP1803 involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of APP1803 not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Financial Statement or, with respect to accounts receivable arising after the Financial Statement Date, on the accounting records of APP1803, are collectible in full within thirty (30) days after billing. The reserve for bad debts shown on the Financial Statement or, with respect to accounts receivable arising after the Financial Statement Date, on the accounting records of APP1803 has been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

### **Section 3.15 Reserved**

**Section 3.16 Insurance.** Section 3.16 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of insurance maintained by APP1803 or any Seller or any Affiliate of any Seller and relating to the assets, business, operations, employees, officers and managers of APP1803 (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the Closing. None of APP1803 or any Seller or any Affiliate of any Seller has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to

Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of APP1803. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. Except as set forth on Section 3.16 of the Disclosure Schedules, there are no claims pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of APP1803 or any Seller or any Affiliate of any Seller is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to APP1803 and are sufficient for compliance with all applicable Laws and Contracts to which APP1803 is a party or by which it is bound.

### **Section 3.17 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 3.17(a) of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened (a) against or by APP1803 affecting any of its properties or assets (or by or against any Seller or any Affiliate thereof and relating to APP1803); or (b) against or by APP1803, any Seller or any Affiliate of any Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred, or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 3.17(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting APP1803 or any of its properties or assets. APP1803 is in compliance with the terms of each Governmental Order set forth in Section 3.17(b) of the Disclosure Schedules. No event has occurred, or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

### **Section 3.18 Compliance With Laws; Permits.**

(a) Except as set forth in Section 3.18(a) of the Disclosure Schedules, APP1803 has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for APP1803 to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.18(b) of the Disclosure Schedules lists all current Permits issued to APP1803, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.18(b) of the Disclosure Schedules.

### **Section 3.19 Environmental Matters.**

(a) APP1803 is currently and has been in compliance with all Environmental Laws and has not, and the Seller has not, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law,

which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) APP1803 has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 3.19(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of APP1803 and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect through the Closing Date in accordance with Environmental Law, and no Seller nor APP1803 is aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of APP1803 as currently carried out. With respect to any such Environmental Permits, Sellers have caused APP1803 to undertake, or will cause APP1803 to undertake prior to the Closing, all measures necessary to facilitate transferability of the same, and none of APP1803 or any Seller is aware of any condition, event or circumstance that might prevent or impede the transferability of the same, nor have they received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) To the Sellers' Knowledge, no real property currently or formerly owned, operated or leased by APP1803 is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) To the Sellers' Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of APP1803 or any real property currently or formerly owned, operated or leased by APP1803, and none of APP1803 or any Seller has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of APP1803 (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, any Seller or APP1803. APP1803 does not, nor has it ever, owned or operated any active or abandoned aboveground or underground storage tanks.

(e) APP1803 does not have any Liability for any Hazardous Materials treatment, storage, or disposal facility or location. None of any Seller or APP1803 has retained or assumed, by contract or operation of Law, any Liabilities of third parties under Environmental Law.

(f) None of any Seller or APP1803 is aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the business or assets of APP1803 as currently conducted.

### **Section 3.20 Employee Benefit Matters.**

(a) Section 3.20(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity or other equity, change in control, retention, severance, vacation, paid time off (PTO), sick time, medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe benefit and other similar agreement, plan,

policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by APP1803 for the benefit of any current or former employee, officer, manager, retiree, independent contractor or consultant of the or any spouse or dependent of such individual, or under which the or any ERISA Affiliate APP1803 has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as required to be listed on Section 3.20(a) of the Disclosure Schedules, each, a “**Benefit Plan**”). Section 3.20(a) separately identifies each Benefit Plan that contains a change in control provision. No Benefit Plan is maintained, sponsored, contributed to, or required to be contributed to by APP1803 primarily for the benefit of employees outside of the United States.

(b) Each Benefit Plan and any related trust has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject APP1803 or any ERISA Affiliate of APP1803 or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP.

(c) Neither APP1803 nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to Liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWAs).

(d) With respect to each Benefit Plan (i) no such plan is a pension plan; (ii) no such plan is a multiemployer plan within the meaning of Section 3(37) of ERISA; (iii) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (iv) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a

trustee for any such plan; (v) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six(6) years is a “single employer plan” subject to Title IV of ERISA; (vi) no such plan is subject to Section 409A of the Code; and (vii) no “reportable event,” as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived, has occurred with respect to any such plan.

(e) Each Benefit Plan can be amended, terminated, or otherwise discontinued after the Closing in accordance with its terms, without Liabilities to Buyer, APP1803 or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. APP1803 does not have any commitment or obligation and APP1803 has not made any representations to any employee, officer, manager, independent contractor, or consultant, whether or not legally binding, to adopt, amend, modify, or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(f) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither APP1803 nor any ERISA Affiliate of APP1803 has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.

(g) Except as set forth in Section 3.20(g) of the Disclosure Schedules, there is no pending or, to Sellers’ Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the five (5) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(h) There has been no amendment to, announcement by any Seller, APP1803 or any of their Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a *de minimis* basis) with respect to any manager, officer, employee, independent contractor or consultant, as applicable. None of any Seller, APP1803, nor any of their Affiliates has any commitment or obligation or has made any representations to any manager, officer, employee, independent contractor, or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan.

(i) Each individual who is classified by APP1803 as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.

(j) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former manager, officer, employee, independent contractor or consultant of APP1803 to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including equity-based compensation) due to any such individual; (iii) limit or restrict the right of APP1803 to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation

pursuant to any Benefit Plan; (v) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (vi) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code. Sellers have made available to Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions.

### **Section 3.21 Employment Matters.**

(a) Section 3.21(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of APP1803 as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in Section 3.21(a) of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of APP1803 for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of APP1803 with respect to any compensation, commissions, bonuses or fees.

(b) APP1803 is not, and APP1803 has never been, a party to or bound by any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”); APP1803 is not, nor has it ever, negotiated any collective bargaining agreement or other Contract with a Union; and there is not, and has never been, any Union representing or purporting to represent any employee of APP1803, and, to Sellers’ Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting APP1803 or any of APP1803’s employees. APP1803 does not have any duty to bargain with any Union.

(c) APP1803 is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence, paid sick leave unemployment insurance, layoffs and terminations. All individuals characterized and treated by APP1803 as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of APP1803 classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. APP1803 is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in Section 3.21(c) of the Disclosure Schedules, there are no Actions against APP1803 pending, or to the Sellers’ Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in

connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of APP1803.

**Section 3.22 Taxes.**

- (a) APP1803 has not and has not been required to file any federal tax returns .
- (b) APP1803 has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, member or other party, and complied with all information reporting and backup withholding provisions of applicable Law.
- (c) Except as set forth in Section 3.22(a) of the Disclosure Schedules, no written claim has been made by any taxing authority in any jurisdiction where APP1803 does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.
- (d) The amount of APP1803's Liability for unpaid Taxes for all periods ending on or before September 30, 2022 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of APP1803's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of APP1803 (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).
- (e) Section 3.22(e) of the Disclosure Schedules sets forth: (i) the taxable years of APP1803 as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired; (ii) those years for which examinations by the taxing authorities have been completed; and (iii) those taxable years for which examinations by taxing authorities are presently being conducted.
- (f) All deficiencies asserted, or assessments made, against APP1803 as a result of any examinations by any taxing authority have been fully paid or settled.
- (g) APP1803 is not a party to any Action by any taxing authority. There are no pending, or, to the Knowledge of Sellers, threatened Actions by any taxing authority.
- (h) Sellers have delivered to Buyer copies of all U.S. federal, state, local, and non-U.S. income, franchise and similar Tax Returns filed by APP1803, examination reports, and statements of deficiencies assessed against, or agreed to by, APP1803 for all Tax periods ending after December 31, 2015.
- (i) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of APP1803.
- (j) Except for Contracts entered into in the ordinary course of business and not primarily related to Taxes, APP1803 is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(k) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into, or issued by any taxing authority with respect to APP1803.

(l) APP1803 is not, nor has it ever been, a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. APP1803 does not have any Liability for Taxes of any Person (other than APP1803) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or non-U.S. Law), as transferee or successor, by contract or otherwise.

(m) APP1803 is, and since its formation has been, classified as a “partnership” for U.S. federal income Tax purposes. APP1803 has not made an election to be treated as an S-corporation or a C-corporation for U.S. federal, state, local or non-U.S. tax purposes.

(n) APP1803 will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of: (i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or non-U.S. Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date; (ii) an installment sale or open transaction occurring on or prior to the Closing Date; (iii) a prepaid amount received on or before the Closing Date; (iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or non-U.S. Law entered into on or prior to the Closing Date; or (v) any election under Section 108(i) of the Code made on or prior to the Closing Date.

(o) No Seller is a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(p) APP1803 is not, nor has it ever been, (i) a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code, (ii) a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code; or (iii) a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(q) Section 3.22(q) of the Disclosure Schedules sets forth all non-U.S. jurisdictions in which APP1803 is subject to Tax, is engaged in business, or has a permanent establishment. APP1803 has not entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8. APP1803 has not transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code.

(r) No property owned by APP1803 is (i) required to be treated as being owned by another person pursuant to the so-called “safe harbor lease” provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

(s) APP1803 has made Section 280E adjustments on its federal income Tax Returns in consultation with and in compliance with the advice given by accounting professionals with experience preparing federal income tax returns for businesses in the cannabis industry.

**Section 3.23 Books and Records.** The minute books of APP1803 have been made available to Buyer, are complete and correct, and have been maintained in accordance with sound business practices. The minute books of APP1803 contain accurate and complete records of all meetings, and actions taken by written consent of, the members and the managers, and no meeting, or action taken by written consent, of any such members or managers has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of APP1803.

**Section 3.24 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of any Seller or APP1803.

**Section 3.25 Securities Laws Matters.**

(a) Such Seller has been advised that shares constituting the Share Consideration, the Initial Promissory Note and the Closing Promissory Note have not been and will not be registered under the Securities Act or any U.S. state securities laws, that such securities may not be sold or otherwise disposed of unless they are registered thereunder or an exemption from registration is available and that accordingly such Seller may be required to bear the economic risk of the investment in such securities for an indefinite period of time.

(b) If such Seller is entitled to receive Buyer Parent Shares, Initial Promissory Notes or Closing Promissory Notes hereunder, such Seller is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act, and has duly completed and executed a U.S. Accredited Investor Certificate in the form set out as Exhibit "G" for delivery to Buyer on or before the Execution Date.

(c) Such Seller is acquiring the Share Consideration, the Initial Promissory Note and the Closing Promissory Note for investment for such Seller's own account and presently does not have a view to sell or resell any of the Share Consideration, the Initial Promissory Note or the Closing Promissory Note except in compliance with and as permitted by Law, including the Securities Act, Canadian Securities Laws and applicable U.S. state securities laws.

(d) Such Seller has been given the opportunity to obtain information and documents (including, without limitation, information and documents filed by Buyer Parent with Canadian Securities Administrators and available on the internet at [www.sedar.com](http://www.sedar.com)), and to ask questions and receive answers about such information and documents, Buyer Parent and the business and prospects of Buyer Parent, and such Seller acknowledges and agrees that no representations concerning such matters or any other matters related to such investment have been made to such Seller except as expressly set forth in this Agreement. Such Seller has consulted its own attorney, accountant or investment advisor with respect to the investment contemplated hereby and its suitability therefor, including the Tax and other economic considerations related to such Seller's investment in the Buyer Parent Shares.

(e) Such Seller (i) has knowledge and experience in financial and business matters such that such Seller is capable of evaluating the merits and risks of the purchase of Buyer Parent Shares as contemplated by this Agreement, (ii) understands and has taken cognizance of all risk factors related to the purchase of such shares and (iii) is able to bear the economic risk of the investment

in such shares for an indefinite period of time and can afford to suffer a complete loss of the investment in such shares.

(f) Such Seller has been informed that the offer of the Share Consideration, the Initial Promissory Note and the Closing Promissory Note is being made pursuant to an exemption from the registration requirements of the Securities Act and applicable U.S. state securities laws relating to transactions by an issuer not involving a public offering, and that, consequently, the materials relating to the offer have not been subject to review and comment by the staff of the Securities and Exchange Commission or any other Governmental Authority.

(g) The purchase of the Share Consideration, the Initial Promissory Note and the Closing Promissory Note by Sellers is to be made under a prospectus exemption available under Canadian Securities Laws.

(h) Such Seller is not subscribing for the Share Consideration, and has not agreed to accept the Initial Promissory Note or the Closing Promissory Note as a result of, or subsequent to, any advertisement, article, notice or other communication published in any newspapers, magazine or similar media or broadcast over television or radio, or presented at any seminar or meeting, or any solicitation of a subscription by a Person not previously known to such Seller, in connection with investments in securities generally.

(i) Such Seller understands and acknowledges that upon the original issuance of the Share Consideration, the Initial Promissory Note and the Closing Promissory Note, and until such time as the same is no longer required under applicable requirements of applicable securities Laws, including Canadian Securities Laws and United States federal and state securities Laws, certificates representing the Buyer Parent Shares comprising the Share Consideration, and all certificates issued in exchange therefor or in substitution thereof, the Initial Promissory Note and the Closing Promissory Note shall bear a legend restricting transfer of such shares in accordance with applicable securities Laws, including Canadian Securities Laws and United States federal and state securities Laws.

**Section 3.26 No Other Representations or Warranties.** Except for the representations and warranties contained in this ARTICLE 3 (including the related portions of the Disclosure Schedules), none of any Seller, APP1803 or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of any Seller or APP1803.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, which exceptions shall be deemed to be part of the representations and warranties made hereunder, Buyer represents and warrants to Seller that the statements contained in this ARTICLE 4 are true and correct as of the date hereof and as of the Closing.

**Section 4.01 Organization and Authority of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Ohio. Buyer has full limited liability company power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by

Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution, and delivery by each Seller) this Agreement constitutes a legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) except as set forth in Section 4.02 of the Disclosure Schedules, require the consent, notice or other action by any Person under any Contract to which Buyer is a party. Except as set forth in Section 4.02 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby, except for such filings, consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, in their absence would not materially adversely affect the ability of Buyer to consummate the transactions contemplated hereby on a timely basis.

**Section 4.03 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of the Buyer.

**Section 4.04 Legal Proceedings.** There are no Actions pending or, to the actual knowledge of any manager of Buyer, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**Section 4.05 Solvency.** Buyer is not insolvent as of immediately prior to the Closing and the consummation of the transactions contemplated by this Agreement will not cause Buyer to become insolvent. As of the Closing Date, Buyer will have sufficient capital resources available to pay the Closing Date Payment Amount.

**Section 4.06 Independent Investigation.** Buyer has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) and assets of APP1803, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Sellers and APP1803 for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties relating to APP1803 and the Sellers set forth in ARTICLE 3 or throughout this Agreement (as

qualified by the Disclosure Schedules); and (b) except as expressly set forth in ARTICLE 3 or throughout this Agreement (as qualified by the Disclosure Schedules), none of the Sellers, APP1803, or any other Person has made, and Buyer has not relied on, any representation or warranty as to the Sellers, APP1803, or this Agreement. Neither APP1803 nor any other Person is making, directly or indirectly, any representation or warranty with respect to any estimates, projections or forecasts involving APP1803. Buyer acknowledges that Buyer is acquiring the APP1803 Interests without any representation or warranty as to merchantability or fitness for any particular purpose of its assets, on an “as is” and “where is” basis, except as expressly set forth in ARTICLE 3 or throughout this Agreement.

## **ARTICLE 5 COVENANTS**

**Section 5.01 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Sellers shall, and shall cause APP1803 to, (x) conduct the business of APP1803 in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current organization, business and franchise of APP1803 and to preserve the rights, franchises, goodwill and relationships of APP1803’s employees, customers, lenders, suppliers, regulators and others having business relationships with APP1803. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall cause APP1803 to not take or permit any action that would cause any of the changes, events, or conditions described in Section 3.08 to occur.

**Section 5.02 Access to Information.** From the date hereof until the Closing, each Seller shall, and shall cause APP1803 to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all properties, assets, books and records, Contracts and other documents and data related to APP1803; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to APP1803 as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of such Seller and APP1803 to cooperate with Buyer in its investigation of APP1803. Any investigation pursuant to this Section 5.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of any Seller or APP1803. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by any Seller in this Agreement.

**Section 5.03 No Solicitation of Other Bids.**

(a) Each Seller shall not, and shall not authorize or permit any of such Seller’s Affiliates (including APP1803) or any of such Seller’s or such Affiliates’ Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Each Seller shall immediately cease and cause to be terminated, and shall cause such Seller’s Affiliates (including APP1803) and all of such Seller’s and such Affiliates’ Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof,

“**Acquisition Proposal**” shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization or other business combination transaction involving APP1803; (ii) the issuance or acquisition of membership interests or other equity interests in APP1803; or (iii) the sale, lease, exchange or other disposition of all or substantially all of APP1803’s properties or assets other than sales of inventory in the ordinary course of business consistent with past practices.

(b) In addition to the other obligations under this Section 5.03, each Seller shall promptly (and in any event within one (1) Business Day after receipt thereof by such Seller, any Affiliate of such Seller (including APP1803) or such Seller’s or such Affiliate’s Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Sellers acknowledge and agree that a breach or threatened breach of this Section 5.03 would give rise to irreparable harm to Buyer, 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 any Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it 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 5.04 Confidentiality.** From the execution of this Agreement and after the Closing, each Seller shall, and shall cause such Seller’s Affiliates to, hold, and shall use its reasonable best efforts to cause such Seller’s and such Affiliates’ Representatives to hold, in confidence any and all information, whether written or oral, concerning APP1803, except to the extent that such Seller can show that such information (a) becomes generally available to and known by the public following the Closing through no fault of such Seller, any of such Seller’s Affiliates or such Seller’s or such Affiliates’ Representatives; or (b) is lawfully acquired by such Seller, any of such Seller’s Affiliates or such Seller’s or such Affiliates’ Representatives following the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If any Seller or any of such Seller’s Affiliates or such Seller’s or such Affiliates’ Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Buyer in writing and shall disclose (and shall instruct such Affiliates and such Representatives to disclose) only that portion of such information which such Seller (or such Affiliate or such Representative) is advised by counsel in writing is legally required to be disclosed, provided that such Seller shall (and such Seller shall instruct such Seller’s Affiliates and such Representatives to) use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 5.05 Governmental Approvals and Consents.**

(a) Within sixty (60) days of the date of this Agreement (the “**Regulatory Filing Deadline**”), Buyer shall, at its sole cost and expense, make, or cause or be made, all filings, submissions, applications, and disclosures (“**Regulatory Filings**”) required under any Law, including the Act, applicable to the parties to this Agreement or their Affiliates in order to obtain

all consents, authorizations, orders and approvals from all Governmental Authorities that are or become necessary for such party's execution and delivery of this Agreement, the performance of such party's obligations pursuant to this Agreement and the Ancillary Documents, and the consummation of the transactions contemplated by this Agreement (collectively, "**Regulatory Approvals**"). The costs associated with applying for Regulatory Approvals and preparing related materials, including application fees imposed by the Department, any fees associated with obtaining or renewing a certificate of operation, and the fees and expenses of Buyer's attorneys, consultants, or other personnel hired to prepare the Regulatory Filings (collectively, "**Application Costs**") shall be borne by Buyer, notwithstanding that Sellers shall use commercially reasonable efforts to cooperate with Buyer in the preparation of the Regulatory Filings. Except as otherwise described in this Agreement, Sellers shall not be compensated or reimbursed for their time, or the fees and expenses incurred by their attorneys, consultants, or other personnel in connection with such cooperation. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any Regulatory Approvals.

(b) Each Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all other third parties that are described in Section 3.05 and Section 4.02 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use commercially reasonable efforts to: (i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document; (ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and (iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between or among Sellers or APP1803 with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other parties hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other parties with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other parties with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

**Section 5.06 Public Announcements.** Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written

consent of, as applicable, with respect to any public announcement by any Seller, the consent of the Buyer, and with respect to any public announcement by the Buyer, the consent of the Sellers' Representative (which consent, in each case, shall not be unreasonably withheld, conditioned or delayed), and the applicable parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.07 Further Assurances.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**Section 5.08 Regulatory Compliance.** This Agreement is subject to strict requirements for ongoing regulatory compliance by the parties hereto, including requirements that the parties hereto take no action in violation of the Ohio Medical Marijuana Control Program, Chapter 3796, et al. of the Ohio Revised Code (together with all related rules and regulations thereunder, and any amendment or replacement act, rules, or regulations, the "Act") or the guidance or instruction of the Department. The parties hereto acknowledge and understand that the Act and/or the requirements of the Department are subject to change and are evolving as the marketplace for state-compliant cannabis businesses continues to evolve. If necessary or desirable to comply with the requirements of the Act and/or the Department, the parties hereto hereby agree to (and to cause their respective Affiliates and Representatives to) use their respective commercially reasonable efforts to take all actions reasonably requested to ensure compliance with the Act and/or the Department, including negotiating in good faith to amend, restate, amend and restate, supplement, or otherwise modify this Agreement to reflect terms that most closely approximate the original intentions of the parties hereto but are responsive to and compliant with the requirements of the Act and/or the Department. In furtherance, not in limitation of the foregoing, the parties hereto further agree to cooperate with the Department to promptly respond to any informational requests, supplemental disclosure requirements, or other correspondence from the Department and, to the extent permitted by the Department, keep all other parties hereto fully and promptly informed as to any such requests, requirements, or correspondence.

## ARTICLE 6 TAX MATTERS

### **Section 6.01 Tax Covenants.**

(a) Without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), no Seller (and, prior to the Closing, none of APP1803, such Seller's Affiliates or such Seller's or such Affiliates' Representatives) shall, to the extent it may affect, or relate to, APP1803, make, change or rescind any material Tax election, amend any material Tax Return or take any position on any material Tax Return, or otherwise take any action that would have the effect of materially increasing the Tax Liability or materially reducing any Tax asset of Buyer or APP1803 in respect of any Post-Closing Tax Period.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other

similar Tax) shall be borne 50% by Sellers and 50% by Buyer. For the avoidance of doubt, Sellers shall solely be responsible for any ordinary income or capital gains tax liability incurred by Sellers as a result of the sale of the APP1803 Interests. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall reasonably cooperate with respect thereto as necessary) and pay any Taxes due and owing. Before any such filing or payment, each Seller shall timely notify Buyer and receive Buyer's consent to file and pay such Taxes or fees, such consent not to be unreasonably withheld, conditioned, or delayed. Buyer shall reimburse the applicable Seller(s) for any Taxes that are the responsibility of Buyer pursuant to this Section 6.01(b) within fifteen (15) days after payment of such Taxes by the applicable Seller(s).

(c) Sellers' Representative shall prepare, or cause to be prepared, all Tax Returns required to be filed by APP1803 after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Returns shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted to Buyer (together with schedules, statements and, to the extent requested by Sellers' Representative, supporting documentation) at least thirty (30) days prior to the due date (including extensions) of such Tax Return. If Buyer objects to any item on any such Tax Return, Buyer shall, within ten (10) days after delivery of such Tax Return, notify Sellers' Representative in writing that Buyer so objects. If a notice of objection is timely delivered, Buyer and Sellers' Representative shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Sellers' Representative are unable to reach such agreement within ten (10) days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Sellers, on the one hand and by Buyer, on the other hand. The preparation and filing of any Tax Return of APP1803 for a Post-Closing Tax Period shall be exclusively within the control of Buyer.

(d) In preparing any Tax Returns pursuant to this ARTICLE 6, APP1803 shall make Section 280E adjustments in consultation with and in compliance with the advice given by accounting professionals with experience preparing federal income tax returns for businesses in the cannabis industry.

**Section 6.02 Termination of Existing Tax Sharing Agreements.** Any and all existing Tax sharing agreements (whether written or not) binding upon APP1803 shall be terminated as of the Closing Date. After such date none of APP1803, any Seller nor any of any Seller's Affiliates and their respective Representatives shall have any further rights or Liabilities thereunder.

**Section 6.03 Tax Indemnification.** Each Seller shall, up to the value of its Pro Rata Percentage of the Purchase Price, indemnify each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.22; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation (including those delegated to the Sellers' Representative) in this ARTICLE 6; (c) all Taxes of APP1803 or relating to the business of

APP1803 for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which APP1803 (or any predecessor of APP1803) is or was a member on or prior to the Closing Date by reason of a Liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of non-U.S., state or local Law; and (e) any and all Taxes of any Person imposed on APP1803 arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date, except that Sellers shall have no liability in the instance that any occurrence of (a)-(e) of this Section 6.03 is caused by Buyer as an ordinary or assumed responsibility of Buyer as a lender to or 48% member of APP1803. In each of the above cases, together with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith, Sellers shall reimburse Buyer for any Taxes of APP1803 that are the responsibility of Sellers pursuant to this Section 6.03 within ten (10) Business Days after payment of such Taxes by Buyer or APP1803.

**Section 6.04 Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

**Section 6.05 Contests.** Buyer agrees to give written notice to Sellers' Representative of the receipt of any written notice by APP1803, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this ARTICLE 6 (a "**Tax Claim**"), or the receipt of any written notice of any audit of APP1803 or the Sellers with respect to a Pre-Closing Tax Period (a "**Pre-Closing Audit**"); provided, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder. Sellers' Representative shall control the contest or resolution of any Tax Claim or Pre-Closing Audit; provided, however, that Sellers' Representative shall obtain the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a claim or ceasing to defend any Tax Claim; and, provided further, that Buyer shall be entitled to participate in the defense of any Tax Claim and to employ counsel of Buyer's choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Buyer.

**Section 6.06 Cooperation and Exchange of Information.** Sellers and Buyer shall provide each other and the Sellers' Representative with such cooperation and information as any of them reasonably may request of the other in filing any Tax Return pursuant to this ARTICLE 6 or in connection with any audit or other proceeding in respect of Taxes of APP1803. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or

other determinations by tax authorities in a Party's possession. Each Seller and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in Buyer's or such Seller's possession relating to Tax matters of APP1803 for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by any other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of APP1803 for any taxable period beginning before the Closing Date, each Seller (or, if applicable, Sellers' Representative) or Buyer (as the case may be) shall provide the other with reasonable written notice and offer the other the opportunity to take custody of such materials.

**Section 6.07 Allocation of Consideration.** The Purchase Price and any other amounts treated as consideration for U.S. federal income Tax purposes shall be allocated among the assets of APP1803 in accordance with Code Section 1060 and the Treasury Regulations thereunder with respect to Buyer and in accordance with Code Section 751(a) and the Treasury Regulations thereunder with respect to Sellers (the "**Purchase Price Allocation**"). Buyer shall deliver to the Sellers' Representative no later than ninety (90) days after the Closing a draft of such Purchase Price Allocation for the Sellers' Representative's review and comment. If the Sellers' Representative disputes any item on the Purchase Price Allocation, it shall notify Buyer of such disputed item (or items) and the basis for its objection within thirty (30) days after the receipt of the draft Purchase Price Allocation. Buyer and the Sellers' Representative shall act in good faith to resolve any such dispute. If Buyer and the Sellers' Representative cannot resolve any disputed item within ten (10) days, Buyer and the Sellers' Representative shall cause the item in question to be resolved by the Independent Accountant, which resolution shall be binding on Buyer and Sellers. Buyer shall revise the Purchase Price Allocation to take into account any subsequent adjustments to the Purchase Price and any other amounts treated as consideration for U.S. federal income Tax purposes. Buyer and Sellers shall file all Tax Returns in all respects and for all purposes consistent with the Purchase Price Allocation as finally determined under this Section 6.07 and none of the parties shall take any position in Tax Returns or otherwise inconsistent with such allocation unless required by applicable Law.

**Section 6.08 Tax Treatment of Indemnification Payments.** Any indemnification payments pursuant to this ARTICLE 6 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 6.09 Payments to Buyer; Nature of Sellers' Obligations.** Any amounts payable to any Buyer Indemnitee pursuant to this ARTICLE 6 shall be satisfied directly from Sellers on a several, but not joint, basis based on each Seller's Pro Rata Percentage.

**Section 6.10 Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.22 and this ARTICLE 6 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

**Section 6.11 Overlap.** To the extent that any obligation or responsibility pursuant to ARTICLE 8 may overlap with an obligation or responsibility pursuant to this ARTICLE 6, the provisions of this ARTICLE 6 shall govern (except with respect to Buyer's indemnification obligations under Section 8.03).

## ARTICLE 7 CONDITIONS TO CLOSING

**Section 7.01 Conditions to Obligations of All Parties.** The obligations of Sellers and Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Sellers shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 3.05 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.02, including (i) the consent in writing of the Department to the transactions contemplated by this Agreement (the “**Department Consent**”), in each case, in form and substance reasonably satisfactory to Buyer and Sellers’ Representative, and no such consent, authorization, order and approval shall have been revoked.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Sellers contained in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.24 and Section 3.25 (each a “**Sellers’ Fundamental Representation**” and together, the “**Sellers’ Fundamental Representations**”), the representations and warranties of Sellers contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). All of the Sellers’ Fundamental Representations shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Each Seller and Sellers’ Representative shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by such Seller or Sellers’ Representative prior to or on the Closing Date; *provided* that, with respect to agreements, covenants and conditions that are qualified by materiality, each Seller and Sellers’ Representative shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) All approvals, consents and waivers from Persons other than Governmental Authorities that are listed on Section 3.05 of the Disclosure Schedules shall have been received and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(d) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(e) The issuance of the Share Consideration and delivery of the Initial Promissory Notes and the Closing Promissory Notes shall be exempt from the registration or prospectus requirements of the Securities Act and Canadian Securities Laws, as applicable.

(f) Each Seller shall have duly executed and delivered an Assignment to Buyer.

(g) The other Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(h) Buyer shall have received a certificate, dated the Closing Date and signed by each Seller that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied.

(i) Buyer shall have received resignations of the managers and officers of APP1803 set forth in Section 7.02(i) of the Disclosure Schedules.

(j) Sellers' Representative shall have delivered to Buyer a good standing certificate (or its equivalent) for APP1803 from the Ohio Secretary of State.

(k) Each Seller shall have delivered to Buyer a certificate pursuant to Sections 1445 and 1446 of the Code that such Seller is not a foreign person within the meaning of Sections 1445 and 1446 of the Code, duly executed by each such Seller.

**Section 7.03 Conditions to Obligations of Sellers.** The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' Representative's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 4.01 and Section 4.03 (each a "**Buyer Fundamental Representation**" and together, the "**Buyer Fundamental Representations**"), the representations and warranties of Buyer contained in this Agreement, the Ancillary Documents to which Buyer is a party and any certificate or other writing delivered by Buyer pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). All of the Buyer Fundamental Representations shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to which Buyer is a party to be performed or complied with by it prior to or on the Closing Date; *provided*, that, with respect to agreements, covenants and conditions that are

qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) All approvals, consents and waivers from Persons other than Governmental Authorities that are listed on Section 4.02 of the Disclosure Schedules shall have been received and executed counterparts thereof shall have been delivered to Sellers' Representative at or prior to the Closing.

(d) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Sellers' Representative.

(e) Sellers' Representative shall have received a certificate, dated the Closing Date and signed by a manager of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied.

## **ARTICLE 8 INDEMNIFICATION**

**Section 8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in Section 3.22 which are subject to ARTICLE 6) shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months from the Closing Date; provided, that the Sellers' Fundamental Representations and the Buyer Fundamental Representations shall survive until sixty (60) days after the expiration of the relevant statute of limitations with respect to the underlying subject matter. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in ARTICLE 6 which are subject to ARTICLE 6) shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period set forth in this Section 8.01 shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification By Sellers.** Subject to the other terms and conditions of this ARTICLE 8, each Seller shall indemnify and defend each of Buyer and its Affiliates (including, following the Closing, APP1803) and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, such Seller's Pro Rata Percentage of any and all Losses incurred or sustained by, or imposed upon, any Buyer Indemnitee based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of any Seller contained in this Agreement (other than in respect of Section 3.22, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to ARTICLE 6); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller or Sellers' Representative pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or

obligation in ARTICLE 6, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to ARTICLE 6), except that

(c) Sellers shall have no liability in the instance that any occurrence of (a)-(b) of this Section 8.02 is caused by Buyer as an ordinary or assumed responsibility of Buyer as a lender to or 48% member of APP1803.

**Section 8.03 Indemnification By Buyer.** Subject to the other terms and conditions of this ARTICLE 8, Buyer shall indemnify and defend each Seller and such Seller's Affiliates and their respective Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, any Seller Indemnitee based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement.

**Section 8.04 Certain Limitations.** The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Sellers shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds ONE HUNDRED THOUSAND DOLLARS (\$100,000) (the "**Basket**"), in which event Sellers shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.02(a) shall not exceed ONE MILLION THREE HUNDRED THREE THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$1,303,680) (the "**Cap**").

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.04(a) and Section 8.04(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any Sellers' Fundamental Representation or any Buyer's Fundamental Representation, the aggregate liability for which, in either Sellers' or Buyer's case, as applicable, shall be capped at the Purchase Price.

(d) The amount of Losses that an Indemnified Party (as that term is described in Section 8.05) may recover pursuant to this ARTICLE 8 shall be reduced, on a dollar for dollar basis, by any Tax benefits actually realized in respect of the Losses forming the basis of such claim for recovery.

(e) For purposes of this ARTICLE 8, any inaccuracy in or breach of any representation or warranty and the amount of any Loss shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

**Section 8.05 Indemnification Procedures.** The Person making a claim under this ARTICLE 8 is referred to as the “**Indemnified Party**,” and each party against whom such claims are asserted under this ARTICLE 8 is referred to as the “**Indemnifying Party**.”

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of the Indemnifying Party’s indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05, the Indemnifying Party shall have the right to take such action as the Indemnifying Party deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by the Indemnified Party subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, that if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of one (1) counsel to the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other and the Sellers’ Representative in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 5.04) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to or any admission of Liability or wrongdoing or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all Liabilities in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), the Indemnified Party shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of the Indemnifying Party’s indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and the Indemnifying Party’s professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance as the Indemnifying Party or any of the Indemnifying Party’s professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) Tax Claims. Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of APP1803 (including, but not limited to, any such claim in respect of a breach of the representations and warranties in Section 3.22 or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in ARTICLE 6) shall be governed exclusively by ARTICLE 6.

## **Section 8.06 Payments.**

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE 8, the Indemnifying Party shall satisfy its obligations within thirty (30) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such thirty (30) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to eight percent (8.0%). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

(b) Any amounts payable to any Buyer Indemnitee pursuant to this ARTICLE 8 shall be satisfied directly from Sellers, on a several, but not joint, basis based on each Seller's Pro Rata Percentage.

(c) Losses payable to or received by an Indemnified Party under this ARTICLE 8 will be reduced on a dollar-for-dollar basis by the amount of any (a) insurance proceeds with respect to such Losses, net of any increase in premiums, deductible, retention or co-payment, or any other out-of-pocket costs of the Indemnified Party as a result of pursuing any such insurance claim; and (b) indemnification payments, contribution payments, collections, or reimbursements with respect to such Losses, net of any out-of-pocket costs of the Indemnified Party as a result of pursuing any such indemnification, contribution, collection or reimbursement (collectively, "**Third Party Recovery Proceeds**"), in each case of (a) or (b), actually received by any Indemnified Party, it being understood that in no event will any indemnification payment under this ARTICLE 8 be delayed in anticipation of the receipt of any Third Party Recovery Proceeds nor will any Indemnified Party be obligated to make any claim against its clients, customers, vendors or suppliers, or to initiate any Action, against any third party, but the Indemnified Party shall be required to use commercially reasonable efforts to recover all amounts reasonably available under then existing insurance policies, except to the extent pursuing such insurance may have a material impact on the Indemnified Party's ability to obtain insurance in the future or on the costs thereof. This Section 8.06(c) shall not imply and shall not be construed to imply any obligation on the part of any Indemnified Party to obtain or maintain any insurance coverage, and the failure of an Indemnified Party obtain or maintain insurance coverage shall not be defense to any indemnification obligation of an Indemnifying Party hereunder.

**Section 8.07 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.08 Effect of Investigation.** Notwithstanding anything contained herein to the contrary, Sellers shall not have (a) any liability for any breach of or inaccuracy in any representation or warranty made by Seller to the extent that Buyer, any of its Affiliates or any of its or their respective officers, employees, counsel or other Representatives (i) had actual knowledge at or before the Closing of the facts by their inclusion in the Disclosure Schedule as a result of which such representation or warranty was breached or inaccurate or (ii) was given notice, at or before the Closing, of a document disclosing such facts and Buyer's acknowledged waiver thereof in writing; or (b) any liability after the Closing for any breach of or failure to perform before the Closing any covenant or obligation of Seller to the extent that Buyer, or its Affiliates or any of its or their respective officers, employees, counsel or other Representatives (i) had actual knowledge

at or before the Closing of such breach or failure by inclusion in the Disclosure Schedule or (ii) was given Notice, at or before the Closing, of a document disclosing such breach or failure and Buyer's acknowledged waiver thereof in writing.

**Section 8.09 Exclusive Remedies; Nature of Sellers' Obligations.** Subject to Section 5.03 and Section 10.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto (or, as respects Sellers, the Sellers' Representative) in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in ARTICLE 6 and this ARTICLE 8. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement such party may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in ARTICLE 6 and this ARTICLE 8. Nothing in this Section 8.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## **ARTICLE 9 TERMINATION**

**Section 9.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Sellers' Representative and Buyer;
- (b) by Buyer by written notice to Sellers' Representative if:
  - (i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by any Seller or Sellers' Representative pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE 7 and such breach, inaccuracy or failure has not been cured by the applicable Seller(s) or by Sellers' Representative within ten (10) days or, if ten (10) days is insufficient to cure by the nature of such breach, inaccuracy or failure, a reasonable amount of time not to exceed sixty (60) days of Sellers' Representative's receipt of written notice of such breach from Buyer; or
  - (ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; *provided* that the Outside Date may be extended by mutual agreement of Buyer and Sellers in the event that the Department's review

of the transactions contemplated by this Agreement is still pending, but the Department Consent has not yet been issued;

- (c) by Sellers' Representative by written notice to Buyer if:
- (i) none of any Seller or the Sellers' Representative is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE 7 and such breach, inaccuracy or failure has not been cured by Buyer within ten (10) days or, if ten (10) days is insufficient to cure by the nature of such breach, inaccuracy or failure, a reasonable amount of time not to exceed sixty (60) days of Buyer's receipt of written notice of such breach from Sellers' Representative; or
  - (ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date (as extended by mutual agreement pursuant to Section 9.01(b)(ii)), unless such failure shall be due to the failure of any Seller or the Sellers' Representative to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by such Person prior to the Closing; or
- (d) by Buyer or Sellers' Representative in writing to the other in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**Section 9.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no Liability on the part of any party hereto except: (a) as set forth in Section 5.04, this ARTICLE 9 and ARTICLE 10; and (b) that nothing herein shall relieve any party hereto from Liability for any willful breach of any provision hereof.

## ARTICLE 10 MISCELLANEOUS

**Section 10.01 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 this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 10.02 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 e-mail (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 10.02):

If to Buyer, to:

Eric Offenberger  
[Redacted: Personal Information]

with a copy, which shall not constitute notice to any Seller or Sellers' Representative, to:

James Munro  
McMillan LLP  
Royal Centre, Suite 1500  
1055 West Georgia Street, PO Box 11117  
Vancouver, BC V6E 4N7  
Canada  
Email: james.munro@mcmillan.ca

and

Clark Wu  
Bianchi Brandt LLP  
6730 N. Scottsdale Rd, Suite 100  
Scottsdale, Arizona 85253  
Email: clark@bianchibrandt.com

If to Seller or the Sellers' Representative, which single notice shall constitute notice to all Sellers and the Sellers' Representative, to:

David Johns  
Email: [Redacted: Personal Information]

with a copy, which shall not constitute notice to Seller or Sellers' Representative, to:

James "Ted" Bibart  
Gordon Bibart, LLC  
[Redacted: Personal Information]

and

Bradley T. Marzola  
Gordon Bibart, LLC  
[Redacted: Personal Information]

**Section 10.03 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. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules 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 Disclosure Schedules, Schedules and 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.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits, the Schedules and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign such party’s rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (a) prior to the Closing Date, Buyer may, without the prior written consent of any other party, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries and (b) at any time Buyer may, without the prior written consent of any other party, assign any or all of its rights and obligations hereunder to any provider of debt financing to it or any of its Affiliates. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.08 No Third-party Beneficiaries.** Except as provided in ARTICLE 6 and ARTICLE 8 regarding Indemnified Parties, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or

implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would require the application of the Laws of a jurisdiction other than the State of Ohio. The parties hereto agree and acknowledge that no party makes, will make, or shall be deemed to make or have made any representation or warranty of any kind regarding the compliance of this Agreement with any Federal Cannabis Laws. No party hereto shall have any right of rescission or amendment arising out of or relating to any non-compliance with Federal Cannabis Laws unless such non-compliance also constitutes a violation of applicable state Law as determined in accordance with the Act or by the Department.

(b) ANY ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT SHALL BE INSTITUTED IN THE STATE COURTS OF OHIO LOCATED IN THE COUNTY OF JACKSON, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY THE MEANS SPECIFIED IN SECTION 10.02 SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF ANY ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH

PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.10(c).

**Section 10.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.12 Sellers' Representative.**

(a) By virtue of the execution of this Agreement by each of the Sellers, and without further action of any Seller, the Sellers will be deemed to have irrevocably constituted and appointed David L. Johns as "**Sellers' Representative**", and by execution of this Agreement David L. Johns hereby accepts such appointment, as agent and attorney-in-fact for and on behalf of the Sellers, with full power of substitution, to act in the name, place and stead of each Seller with respect to this Agreement and the taking by the Sellers' Representative of any and all actions and the making of any decisions required or permitted to be taken by any Seller under this Agreement. Such powers shall include the exercise of the power to: (i) give and receive notices and communications under this Agreement; (ii) receive and pay funds under this Agreement, (iii) prepare and deliver documents, certificates and instruments, and give instructions, under this Agreement, (iv) authorize or object to claims for payment or indemnification made by Buyer or any other Buyer Indemnitee under this Agreement, including pursuant to ARTICLE 6 and ARTICLE 8; (v) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to claims for payment or for indemnification made by Buyer or any other Buyer Indemnitee under this Agreement, including pursuant to ARTICLE 6 and ARTICLE 8; (vi) agree to, negotiate, enter into settlements and compromises of, and comply with orders or otherwise handle any other matters specifically delegated to Sellers' Representative in this Agreement, including pursuant to ARTICLE 6 and ARTICLE 8; and (vii) take all actions necessary or appropriate in the good faith judgment of the Sellers' Representative for the accomplishment of the foregoing. The power of attorney hereby is coupled with an interest and is irrevocable, and may be delegated by the Sellers' Representative. The identity of the Sellers' Representative and the terms of the agency may be changed, and a successor Sellers' Representative may be appointed, from time to time (including in the event of the death, disability or other incapacity of the Sellers' Representative) by the consent of a majority of the Sellers, and any such successor will succeed the Sellers' Representative as Sellers' Representative under this Agreement. Amounts paid by or on behalf of Buyer to the Sellers' Representative on behalf of the Sellers shall be treated as received by the Sellers.

(b) The Sellers' Representative will not be liable for any act done or omitted hereunder as the Sellers' Representative while acting in good faith and not in a manner constituting gross negligence or willful misconduct, and any act done or omitted pursuant to the advice of counsel will be conclusive evidence of such good faith. Sellers will indemnify the Sellers' Representative and hold the Sellers' Representative harmless against any Losses incurred without gross negligence or willful misconduct on the part of the Sellers' Representative and arising out of or in connection with the acceptance or administration of the Sellers' Representative's duties hereunder.

(c) Any decision, act, consent or instruction of the Sellers' Representative will constitute a decision of all Sellers and will be final, binding and conclusive upon each Seller, and Buyer, its Affiliates, any other Buyer Indemnitee, and any other Person may rely upon any decision, act, consent or instruction of the Sellers' Representative as being the decision, act, consent or instruction of each Seller. Buyer, its Affiliates, any other Buyer Indemnitee, and any other Person are hereby relieved from any Liability to any Person for any acts done by Sellers' Representative and any acts done by Buyer, its Affiliates, any other Buyer Indemnitee, and any other Person in accordance with any such decision, act, consent or instruction of the Sellers' Representative in accordance with this Section 10.12.

**Section 10.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature page follows.]*

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

**BUYER:**

VAPEN OHIO, LLC

By:

(s) *Eric Offenberger*

Name: Eric Offenberger

Title:

**SELLERS:**

(s) *Ryan K. Wright*

Ryan K. Wright

(s) *Charles M. Fields*

Charles M. Fields

(s) *Kevin L. Lykens*

Kevin L. Lykens

(s) *Walter E. Dennis Jr.*

Walter E. Dennis, Jr.

(s) *Michael W. Redd*

Michael W. Redd

(s) *Robert A. Munn*

Robert A. Munn

(s) *Michael J. Shawd*

Michael J. Shawd

(s) *Alan Stockmeister*

Alan Stockmeister

(s) *Seth A. Stockmeister*

Seth A. Stockmeister

(s) *David L. Johns*

David L. Johns

**SELLERS' REPRESENTATIVE:**

(s) *David L. Johns*

David L. Johns



Alan Stockmeister	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]	[Redacted: Confidential Information]
<b>TOTAL</b>		<b>4,887,898</b>	<b>\$1,297,323.27</b>	<b>\$486,496.19</b>	<b>\$486,496.19</b>	<b>\$324,330.81</b>	<b>\$1,410,478.99</b>	<b>\$3,738,397.75</b>

**EXHIBIT "B"**

**FORM OF INITIAL PROMISSORY NOTES**

See attached.

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

VAPEN OHIO, LLC

8.00% PROMISSORY NOTE

PROMISSORY NOTE NO. IPN[●]

PRINCIPAL AMOUNT: \$[●]

VAPEN OHIO, LLC (the “Company”), a corporation incorporated under the laws of Wyoming, for value received, hereby acknowledges itself indebted and promises to pay or to the order of [insert name of Seller] of [insert address of Seller] (hereinafter referred to as the “holder” or “Noteholder”) the Principal Amount (set forth above), as adjusted and in the manner hereinafter provided at such place as the holder may designate by notice in writing to the Company, on the date that is six (6) months following closing (the “Closing”) of the transactions contemplated by the membership interest purchase agreement dated December 15, 2022 between the Company and the holders of membership interests of Appalachian Pharm Products, LLC, or such earlier date as the Principal Amount may become due and payable (the “Maturity Date”), and to pay interest on the Principal Amount outstanding from time to time owing hereunder to the date of payment as hereinafter provided, both before and after maturity or demand, default and judgement. This Note is issued subject to the terms and conditions appended hereto as **Schedule “A”**.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

**IN WITNESS WHEREOF**, the Company has caused this Note to be executed by a duly authorized officer.

DATED for reference this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**VAPEN OHIO, LLC**

Per:

\_\_\_\_\_  
Authorized Signatory

*(See terms and conditions attached hereto)*

## SCHEDULE “A”

### TERMS AND CONDITIONS FOR 8.00% PROMISSORY NOTES ISSUED BY VAPEN OHIO, LLC

#### ARTICLE 1 INTERPRETATION

##### 1.1 Defined Terms

In this Note, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the meanings set out below:

- (a) “**Act of Enforcement**” shall have the meaning set forth in Section 6.1;
- (b) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday in the Province of British Columbia in the State of Ohio;
- (c) “**Closing**” means the closing of the Transaction;
- (d) “**Company**” means Vapen Ohio, LLC and its successors and assigns;
- (e) “**Events of Default**” shall have the meaning set forth in Section 5.1;
- (f) “**Issue Date**” means December 15, 2022;
- (g) “**Maturity Date**” means the date that is six (6) months following Closing or such earlier date as the Principal Amount may become due and payable;
- (h) “**MIPA**” means the membership interest purchase agreement dated December 15, 2022 between the Company and the holders of membership interests of [insert APP1803, LLC or Appalachian Pharm Products, LLC, as applicable to the transaction to which this Note pertains], governing the Transaction;
- (i) “**Note**” means this 8.00% promissory note;
- (j) “**Noteholders**” means, collectively, the Noteholder and the holders of the Other Notes;
- (k) “**Official Body**” means any government or political subdivision or any agency, authority, bureau, central bank, monetary authority, commission, department or instrumentality thereof, or any court, tribunal or arbitrator, whether foreign or domestic;
- (l) “**Other Notes**” means each of the other 8.00% promissory notes, substantially on the same terms as this Note, issued by the Company on the Issue Date;
- (m) “**Person**” means an individual, partnership, corporation, trust, unincorporated association, joint venture or government or any agent, instrument or political subdivision thereof;
- (n) “**Principal Amount**” means the principal amount outstanding under this Note from time to time;
- (o) “**Redemption Date**” shall have the meaning set forth in Section 2.5;
- (p) “**Redemption Notice**” shall have the meaning set forth in Section 2.6;
- (q) “**Redemption Price**” means the amount of Principal Amount called for redemption under Section 2.5, plus accrued and unpaid interest to the Redemption Date, to be determined in accordance with Section 2.5; and

(r) “**Transaction**” means the acquisition by the Company of all of the membership interests of [insert APP1803, LLC or Appalachian Pharm Products, LLC, as applicable to the transaction to which this Note pertains] in accordance with the MIPA.

## 1.2 **Currency**

Unless otherwise indicated, all references to dollar amounts herein are references to currency of the United States.

## **ARTICLE 2 NOTE**

### 2.1 **Principal Amount Adjustments**

In the event that the Company is entitled to indemnification in accordance with Article 8 (Indemnification) of the MIPA, the Principal Amount of this Note shall be reduced pro rata with the principal amounts of the Other Notes for an aggregate reduction, on a dollar-for-dollar basis, equal to the amount of actual Losses (as defined in the MIPA) subject to indemnification, and such reduction shall be deemed to have been setoff against the Noteholder’s Pro Rata Percentage (as defined in the MIPA) of such claimed Losses. If such an event occurs, the Company shall promptly deliver a replacement Note evidencing the adjusted Principal Amount to the Noteholder and this Note shall be deemed to be cancelled without further action by the Company or the Noteholder.

### 2.2 **Principal Amount**

Subject to the Company’s ability or requirement to prepay this Note pursuant to Section 2.4 and Section 4.1(d), respectively, and the early redemption of the Note pursuant to the terms set forth in Sections 2.5 to 2.7, the Company shall repay, in cash, the Principal Amount, together with all accrued and unpaid interest thereon, by 5:00 p.m. (Columbus time) on the Maturity Date.

### 2.3 **Interest on Note**

Subject to Section 5.2, interest shall accrue on the Principal Amount of the Note, from day to day, before as well as after maturity, before as well as after default and before as well as after judgement, at a rate of 8.00% per annum, commencing on the Issue Date, and payable in cash, on the Maturity Date.

### 2.4 **Prepayment of Principal Amount and Interest on Note**

The Company may from time to time, at the Company’s option, on any one or more occasion prepay all or a part of the Principal Amount plus accrued and unpaid interest without penalty or bonus.

### 2.5 **Early Redemption of Note**

From and after the Issue Date, the Company may from time to time, at its option, on any one or more occasion, redeem and prepay in cash all or a part of the Principal Amount plus all accrued and unpaid interest thereon up to and including the date of the redemption (“**Redemption Date**”).

### 2.6 **Notice of Redemption**

The Company will give notice of early redemption (the “**Redemption Notice**”), in accordance with Section 7.3 hereof, of all or part of this Note to the Noteholder not more than 30 calendar days or less than 10 calendar days prior to the Redemption Date. Every Redemption Notice shall specify the aggregate Principal Amount of this Note called for redemption, the Redemption Date and the Redemption Price.

## 2.7 **Payment of Amount Redeemed**

Upon a Redemption Notice being given, that portion of the Note that is being redeemed will become due and payable in cash at the Redemption Price, on the Redemption Date specified in the Redemption Notice and the Company may not withdraw the Redemption Notice without the prior consent of the Noteholder.

## 2.8 **Outstanding Balance**

Notwithstanding the stated Principal Amount of this Note, the actual outstanding balance of the Note from time to time shall be the aggregate outstanding Principal Amount of the Note, together with accrued interest thereon and all other amounts payable by the Company to the Noteholder pursuant to this Note.

## 2.9 **Failure to Close Transaction**

- (a) In the event that the Company and Sellers' Representative (as defined in the MIPA), each acting reasonably, determines that the Transaction is incapable of Closing due to a denial of a required regulatory consent or otherwise, the Company shall give notice of such determination, in accordance with Section 7.3, and
- (i) The Noteholder shall forthwith return all monies paid hereunder to the Noteholder to the Company; and
  - (ii) This Note shall be cancelled and of no further force and effect.

### **ARTICLE 3 UNSECURED SUBORDINATED OBLIGATION AND RANK**

#### 3.1 **Unsecured Subordinated Obligation**

This Note shall be an unsecured obligation of the Company and shall be subordinated and postponed to the Company's senior secured credit facilities and any other senior secured or unsecured creditor but designated as "senior" note of Company issued and outstanding from time to time.

#### 3.2 **Notes to Rank Pari Passu**

This Note and the Other Notes will, once issued, rank *pari passu* with each other and each Noteholder shall be equally and proportionately entitled to the benefits hereof as if all of the Notes had been issued and negotiated simultaneously.

### **ARTICLE 4 COVENANTS**

#### 4.1 **Covenants of the Company**

The Company covenants and agrees with the Noteholder that, unless otherwise consented to in writing by the Noteholder:

- (a) **Observe Obligations.** The Company will duly pay or cause to be paid to the Noteholder the Principal Amount and interest of this Note and any other amounts owed to the Noteholder at the dates and places, and in the manner set forth herein.
- (b) **Prompt Payment.** As soon as the Company, in its sole discretion, believes it has sufficient positive cash flow to do so, the Company shall pay or cause to be paid to the Noteholder such amounts as may be determined, from time to time, by the Company, with such payments to be applied to reduce the Principal Amount of this Note.
- (c) **Change of Control.** The Company shall not merge with or otherwise be acquired by another entity such that a change of control occurs unless (i) where the Company remains the issuer of this Note, such transaction

does not otherwise result in an Event of Default, or (ii) where such transaction results in a new issuer, such issuer expressly assumes all obligations of the Company under this Note.

- (d) **Change of Chief Executive Officer.** Notwithstanding anything to the contrary herein, unless otherwise consented to by Sellers' Representative (for and on behalf of the Noteholder and the holders of the Other Notes), such consent not to be unreasonably withheld, all obligations owing pursuant to this Note shall immediately become due and payable in the event that: (i) the Company's parent, Vext Science, Inc. ("Vext"), completes a change of control transaction where Eric Offenberger is not the Chief Executive Officer of the resulting issuer, (ii) Eric Offenberger fails to hold the office of Chief Executive Officer of Vext for any other reason (other than death or disability), (iii) Eric Offenberger fails to hold the office of Chief Executive Officer of Vext as a result of his death or disability and Jason T. Nguyen is not appointed as Chief Executive Officer of Vext, or (iv) if appointed as a result of the death or disability of Eric Offenberger, Jason T. Nguyen fails to hold the office of Chief Executive Officer of Vext and Eric Offenberger does not resume his duties as Chief Executive Officer of Vext (in the event that Eric Offenberger is no longer disabled).

## ARTICLE 5 EVENTS OF DEFAULT

### 5.1 General

The occurrence of any one or more of the following events ("**Events of Default**") will constitute a default hereunder (whether any such event is voluntary or involuntary or is effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court of any order, rule or regulation of any administrative or governmental body); provided, however, that no such event shall be an Event of Default until and unless the Closing occurs:

- (a) **Non-Compliance:** the Company fails to observe or perform one or more material covenants, agreements, conditions or obligations in favour of the Noteholder, whether or not herein contained, including a failure to pay any or all of the Principal Amount, interest and other monies due under the Note when due, and such failure continues unremedied for a period of 15 days after the Noteholder gives notice thereof to the Company;
- (b) **Ceasing to Carry on Business:** the Company ceases or threatens to cease to carry on business;
- (c) **Bankruptcy or Insolvency:** the Company becomes insolvent or makes a voluntary assignment or proposal in bankruptcy or otherwise acknowledges its insolvency, or a bankruptcy petition is filed or presented against the Company, or the Company commits or threatens to commit an act of bankruptcy;
- (d) **Receivership:** a receiver or receiver manager of the Company is appointed under any statute or pursuant to any document issued by the Company;
- (e) **Compromise or Arrangement:** any proceedings with respect to either of the Company are commenced under the compromise or arrangement provisions of the corporations statute pursuant to which the Company is governed, or the Company enters into an arrangement or compromise with any or all of its creditors pursuant to such provisions or otherwise;
- (f) **Companies' Creditors Arrangement Act:** any proceedings with respect to the Company are commenced in any jurisdiction under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation; and
- (g) **Liquidation:** an order is made, a resolution is passed, or a petition is filed, for the liquidation, dissolution or winding-up of the Company.

### 5.2 Default Interest Rate

Upon and during the continuation of an Event of Default, the interest rate payable on this Note shall increase from 8.00% per annum to 12.00% per annum, commencing on the date of such Event of Default or the date

such circumstances gave rise to such Event of Default without regard to any notice requirement, whichever is earlier, until such payment default is cured.

## **ARTICLE 6 RIGHTS, REMEDIES AND POWERS**

### **6.1 Upon Default**

Upon the occurrence of an Event of Default and at any time thereafter, so long as such Event of Default is continuing, the Noteholder may exercise any and all of its rights pursuant to this Note, including declaring the Principal Amount and interest then outstanding on such date and all other amounts outstanding to be due and payable forthwith and to take any and all steps set out herein and otherwise available under applicable law to enforce the security granted to the Noteholder (an “**Act of Enforcement**”).

### **6.2 Act of Enforcement**

Notwithstanding any other provisions contained in this Note, so long as any Notes remain outstanding, prior written consent or an affirmative vote of the holders of a majority of the then outstanding Notes shall be required for a Noteholder to exercise an Act of Enforcement.

### **6.3 Upon Default**

Upon the occurrence of an Event of Default and at any time thereafter, so long as such Event of Default is continuing, the Noteholder may exercise any or all of its rights pursuant to this Note, including declaring the Principal Amount and interest then outstanding on such date and all other amounts outstanding to be due and payable forthwith.

### **6.4 Waiver**

The Noteholder in its absolute discretion may, at any time and from time to time by written notice, waive any breach by the Company of any of its covenants or agreements herein. No failure or delay on the part of the Noteholder to exercise any right, remedy or power given herein or by any other existing or future agreement or now or hereafter existing by statute, at law or in equity will operate as a waiver thereof, nor will any single or partial exercise of any such right, remedy or power preclude any other exercise thereof or the exercise of any other such right, remedy or power, nor will any waiver by the Noteholder be deemed to be a waiver of any subsequent, similar or other event.

## **ARTICLE 7 OTHER AGREEMENTS**

### **7.1 Withholding Taxes**

If the Company is obliged to withhold any payment hereunder on account of present or future taxes, duties, assessments or other governmental charges required by law, the Company shall make such withholding or deduction and pay the balance owing to the Noteholder.

### **7.2 Amendment and Waiver**

Neither this Note nor any provision hereof may be amended, waived, discharged or terminated except by a document in writing executed by the party against whom enforcement of the amendment, waiver, discharge or termination is sought.

### **7.3 Notices and Other Instruments**

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be in writing and shall be:

- (a) personally delivered to such party; or
- (b) except during a period of strike, lock-out or other postal disruption, sent by double registered mail, postage prepaid to the address of such party set forth on page one; or
- (c) sent by electronic transmission or other means of electronic communication to the address of such party set forth on page one;

and shall be deemed to have been received by such party on the earliest of the date of delivery under subsection 7.3(a), the actual date of receipt when mailed under subsection 7.3(b) and the Business Day following the date of communication under subsection 7.3(c). Any party may give written notice to the other parties of a change of address to some other address, in which event any communication shall thereafter be given to such party as hereinbefore provided, at the last such changed address of which the party communication has received written notice.

#### 7.4 **Maximum Rate**

Notwithstanding any other provisions of this Note or any other agreement, the maximum amount (including interest, fees, bonus and any other consideration) payable to the Noteholder in connection with this Note and each part thereof shall not exceed the maximum allowable return permitted under the laws of the State of Ohio, and the provisions of this Note and all other existing and future agreements are hereby modified to the extent necessary to effect the foregoing.

#### 7.5 **Assignment**

No party may assign its rights or benefits under this Note without the prior written consent of the other party, acting reasonably.

#### 7.6 **Successors and Assigns**

This Note shall be binding upon the Company, its successors and permitted assigns, and shall enure to the benefit of the Noteholder, its successors and permitted assigns.

#### 7.7 **Headings, etc.**

The division of this Note into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

#### 7.8 **Severability**

The provisions of this Note are intended to be severable. If any provision of this Note shall be deemed by any court of competent jurisdiction or held to be invalid or void or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

#### 7.9 **Noteholder's Rights and Remedies**

In addition to the foregoing without limitation: (i) the Noteholder's rights and remedies hereunder shall be cumulative and not exclusive of any rights or remedies which it would otherwise have; no delay or omission by the Noteholder in exercising or enforcing any of the Noteholder's rights and remedies hereunder shall operate as, or constitute, a waiver thereof; no waiver by the Noteholder of any Event of Default shall operate as a waiver of any other default hereunder; no single or partial exercise of any of the Noteholder's rights or remedies hereunder, and no express or implied agreement or transaction of whatever nature entered into between the Noteholder and any Person, at any time, shall preclude the other or further exercise of the Noteholder's rights and remedies hereunder; no waiver by the Noteholder of any of the Noteholder's rights and remedies hereunder on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver; and (ii) the Noteholder's rights and

remedies hereunder may be exercised at such time or times and in such order of preference as the Noteholder may determine.

7.10           **Modification**

From time to time the Company may modify the terms and conditions hereof for any purpose not inconsistent with the terms hereof, including the correction or rectification of any ambiguities, defective provisions, errors or omissions herein.

7.11           **Governing Law**

This Note shall be governed by and construed in accordance with the laws of the State of Ohio.

[End of Schedule "A"]

**EXHIBIT "C"**

**FORM OF CLOSING PROMISSORY NOTES**

See attached.

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

VAPEN OHIO, LLC

8.00% PROMISSORY NOTE

PROMISSORY NOTE NO. CPN[●]

PRINCIPAL AMOUNT: \$[●]

VAPEN OHIO, LLC (the “Company”), a corporation incorporated under the laws of Wyoming, for value received, hereby acknowledges itself indebted and promises to pay or to the order of [insert name of Seller] of [insert address of Seller] (hereinafter referred to as the “holder” or “Noteholder”) the Principal Amount (set forth above), as adjusted and in the manner hereinafter provided at such place as the holder may designate by notice in writing to the Company, on December 31, 2026 or such earlier date as the Principal Amount may become due and payable (the “Maturity Date”), and to pay interest on the Principal Amount outstanding from time to time owing hereunder to the date of payment as hereinafter provided, both before and after maturity or demand, default and judgement. This Note is issued subject to the terms and conditions appended hereto as **Schedule “A”**.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

**IN WITNESS WHEREOF**, the Company has caused this Note to be executed by a duly authorized officer.

DATED for reference this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**VAPEN OHIO, LLC**

Per:

\_\_\_\_\_  
Authorized Signatory

*(See terms and conditions attached hereto)*

## SCHEDULE “A”

### TERMS AND CONDITIONS FOR 8.00% PROMISSORY NOTES ISSUED BY VAPEN OHIO, LLC

#### ARTICLE 1 INTERPRETATION

##### 1.1 Defined Terms

In this Note, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the meanings set out below:

- (a) “**Act of Enforcement**” shall have the meaning set forth in Section 6.1;
- (b) “**Business Day**” means a day, other than a Saturday, Sunday or statutory holiday in the Province of British Columbia in the State of Ohio;
- (c) “**Closing**” means the closing of the Transaction;
- (d) “**Company**” means Vapen Ohio, LLC and its successors and assigns;
- (e) “**Effective Date**” means the earlier of January 1, 2023 and the closing date of the Transaction;
- (f) “**Events of Default**” shall have the meaning set forth in Section 5.1;
- (g) “**Initial Repayment Date**” shall have the meaning set forth in Section 2.2(a);
- (h) “**Interest Repayment Date**” shall have the meaning set forth in Section 2.3;
- (i) “**Issue Date**” means [●], 2022;
- (j) “**Maturity Date**” means December 31, 2026 or such earlier date as the Principal Amount may become due and payable;
- (k) “**MIPA**” means the membership interest purchase agreement dated December 15, 2022 between the Company and the holders of membership interests of [insert APP1803, LLC or Appalachian Pharm Products, LLC, as applicable to the transaction to which this Note pertains], governing the Transaction;
- (l) “**Note**” means this 8.00% promissory note;
- (m) “**Noteholders**” means, collectively, the Noteholder and the holders of the Other Notes;
- (n) “**Official Body**” means any government or political subdivision or any agency, authority, bureau, central bank, monetary authority, commission, department or instrumentality thereof, or any court, tribunal or arbitrator, whether foreign or domestic;
- (o) “**Other Notes**” means each of the other 8.00% promissory notes, substantially on the same terms as this Note, issued by the Company on the Issue Date;
- (p) “**Person**” means an individual, partnership, corporation, trust, unincorporated association, joint venture or government or any agent, instrument or political subdivision thereof;
- (q) “**Principal Amount**” means the principal amount outstanding under this Note from time to time;
- (r) “**Redemption Date**” shall have the meaning set forth in Section 2.5;

- (s) **“Redemption Notice”** shall have the meaning set forth in Section 2.6;
- (t) **“Redemption Price”** means the amount of Principal Amount called for redemption under Section 2.5, plus accrued and unpaid interest to the Redemption Date, to be determined in accordance with Section 2.5; and
- (u) **“Transaction”** means the acquisition by the Company of all of the membership interests of [insert APP1803, LLC or Appalachian Pharm Products, LLC, as applicable to the transaction to which this Note pertains] in accordance with the MIPA.

## 1.2 **Currency**

Unless otherwise indicated, all references to dollar amounts herein are references to currency of the United States.

# **ARTICLE 2 NOTE**

## 2.1 **Principal Amount Adjustments**

In the event that the Company is entitled to indemnification in accordance with Article 8 (Indemnification) of the MIPA, the Principal Amount of this Note shall be reduced pro rata with the principal amounts of the Other Notes for an aggregate reduction, on a dollar-for-dollar basis, equal to the amount of actual Losses (as defined in the MIPA) subject to indemnification, and such reduction shall be deemed to have been setoff against the Noteholder’s Pro Rata Percentage (as defined in the MIPA) of such claimed Losses. If such an event occurs, the Company shall promptly deliver a replacement Note evidencing the adjusted Principal Amount to the Noteholder and this Note shall be deemed to be cancelled without further action by the Company or the Noteholder.

## 2.2 **Principal Amount**

Subject to the Company’s ability or requirement to prepay this Note pursuant to Section 2.4 and Section 4.1(c), respectively, and the early redemption of the Note pursuant to the terms set forth in Sections 2.5 to 2.7, the Company agrees that:

- (a) From and after the date that is 24 months from the Effective Date (the **“Initial Repayment Date”**), the Company shall repay, in cash, the Principal Amount outstanding as of the Initial Repayment Date in equal quarterly installments, based on a 20 year amortization schedule commencing on the Initial Repayment Date, with each such payment due on an Interest Payment Date (as defined herein).
- (b) The Company shall repay, in cash, the Principal Amount, together with all accrued and unpaid interest thereon, by 5:00 p.m. (Columbus time) on the Maturity Date.

## 2.3 **Interest on Note**

Subject to Section 5.2, interest shall accrue on the Principal Amount of the Notes, beginning on the Effective Date, from day to day, before as well as after maturity, before as well as after default and before as well as after judgement, at a rate of 8.00 % per annum, payable, in cash, quarterly in arrears in equal instalments on the first Business Day after the end of each calendar quarter (each, an **“Interest Payment Date”**) commencing on the Effective Date and until the Maturity Date. If the Company fails to make any payment of Principal Amount or interest required to be made hereunder, on the day on which the same is due and payable, the Company will pay interest on the amount or amounts so required to have been paid at the rate of interest as aforesaid calculated and payable from the date of such failure until the date of payment.

## 2.4 **Prepayment of Principal Amount and Interest on Note**

The Company may from time to time, at the Company’s option, on any one or more occasion prepay all or a part of the Principal Amount plus accrued and unpaid interest without penalty or bonus.

## 2.5 **Early Redemption of Note**

From and after the Issue Date, the Company may from time to time, at its option, on any one or more occasion, redeem and prepay in cash all or a part of the Principal Amount plus all accrued and unpaid interest thereon up to and including the date of the redemption (“**Redemption Date**”).

## 2.6 **Notice of Redemption**

The Company will give notice of early redemption (the “**Redemption Notice**”), in accordance with Section 7.3 hereof, of all or part of this Note to the Noteholder not more than 30 calendar days or less than 10 calendar days prior to the Redemption Date. Every Redemption Notice shall specify the aggregate Principal Amount of this Note called for redemption, the Redemption Date and the Redemption Price.

## 2.7 **Payment of Amount Redeemed**

Upon a Redemption Notice being given, that portion of the Note that is being redeemed will become due and payable in cash at the Redemption Price, on the Redemption Date specified in the Redemption Notice and the Company may not withdraw the Redemption Notice without the prior consent of the Noteholder.

## 2.8 **Outstanding Balance**

Notwithstanding the stated Principal Amount of this Note, the actual outstanding balance of the Note from time to time shall be the aggregate outstanding Principal Amount of the Note, together with accrued interest thereon and all other amounts payable by the Company to the Noteholder pursuant to this Note.

## 2.9 **Failure to Close Transaction**

- (a) In the event that the Company and Sellers’ Representative (as defined in the MIPA), each acting reasonably, determines that the Transaction is incapable of Closing due to a denial of a required regulatory consent or otherwise, the Company shall give notice of such determination, in accordance with Section 7.3, and
  - (i) The Noteholder shall forthwith return all monies paid hereunder to the Noteholder to the Company; and
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## **ARTICLE 3 UNSECURED SUBORDINATED OBLIGATION AND RANK**

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## ARTICLE 4 COVENANTS

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The Company covenants and agrees with the Noteholder that, unless otherwise consented to in writing by the Noteholder:

- (a) **Observe Obligations.** The Company will duly pay or cause to be paid to the Noteholder the Principal Amount and interest of this Note and any other amounts owed to the Noteholder at the dates and places, and in the manner set forth herein.
- (b) **Change of Control.** The Company shall not merge with or otherwise be acquired by another entity such that a change of control occurs unless (i) where the Company remains the issuer of this Note, such transaction does not otherwise result in an Event of Default, or (ii) where such transaction results in a new issuer, such issuer expressly assumes all obligations of the Company under this Note.
- (c) **Change of Chief Executive Officer.** Notwithstanding anything to the contrary herein, unless otherwise consented to by Sellers' Representative (for and on behalf of the Noteholder and the holders of the Other Notes), such consent not to be unreasonably withheld, all obligations owing pursuant to this Note shall immediately become due and payable in the event that: (i) the Company's parent, Vext Science, Inc. ("Vext"), completes a change of control transaction where Eric Offenberger is not the Chief Executive Officer of the resulting issuer, (ii) Eric Offenberger fails to hold the office of Chief Executive Officer of Vext for any other reason (other than death or disability), (iii) Eric Offenberger fails to hold the office of Chief Executive Officer of Vext as a result of his death or disability and Jason T. Nguyen is not appointed as Chief Executive Officer of Vext, or (iv) if appointed as a result of the death or disability of Eric Offenberger, Jason T. Nguyen fails to hold the office of Chief Executive Officer of Vext and Eric Offenberger does not resume his duties as Chief Executive Officer of Vext (in the event that Eric Offenberger is no longer disabled).

## ARTICLE 5 EVENTS OF DEFAULT

### 5.1 General

The occurrence of any one or more of the following events ("**Events of Default**") will constitute a default hereunder (whether any such event is voluntary or involuntary or is effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court of any order, rule or regulation of any administrative or governmental body); provided, however, that no such event shall be an Event of Default until and unless the Closing occurs:

- (a) **Non-Compliance:** the Company fails to observe or perform one or more material covenants, agreements, conditions or obligations in favour of the Noteholder, whether or not herein contained, including a failure to pay any or all of the Principal Amount, interest and other monies due under the Note when due, and such failure continues unremedied for a period of 15 days after the Noteholder gives notice thereof to the Company;
- (b) **Ceasing to Carry on Business:** the Company ceases or threatens to cease to carry on business;
- (c) **Bankruptcy or Insolvency:** the Company becomes insolvent or makes a voluntary assignment or proposal in bankruptcy or otherwise acknowledges its insolvency, or a bankruptcy petition is filed or presented against the Company, or the Company commits or threatens to commit an act of bankruptcy;
- (d) **Receivership:** a receiver or receiver manager of the Company is appointed under any statute or pursuant to any document issued by the Company;
- (e) **Compromise or Arrangement:** any proceedings with respect to either of the Company are commenced under the compromise or arrangement provisions of the corporations statute pursuant to which the Company

is governed, or the Company enters into an arrangement or compromise with any or all of its creditors pursuant to such provisions or otherwise;

- (f) **Companies' Creditors Arrangement Act:** any proceedings with respect to the Company are commenced in any jurisdiction under the *Companies' Creditors Arrangement Act* (Canada) or any similar legislation; and
- (g) **Liquidation:** an order is made, a resolution is passed, or a petition is filed, for the liquidation, dissolution or winding-up of the Company.

## 5.2 **Default Interest Rate**

Upon and during the continuation of an Event of Default, the interest rate payable on this Note shall increase from 8.00% per annum to 12.00% per annum, commencing on the date of such Event of Default or the date such circumstances gave rise to such Event of Default without regard to any notice requirement, whichever is earlier, until such payment default is cured.

## **ARTICLE 6 RIGHTS, REMEDIES AND POWERS**

### 6.1 **Upon Default**

Upon the occurrence of an Event of Default and at any time thereafter, so long as such Event of Default is continuing, the Noteholder may exercise any and all of its rights pursuant to this Note, including declaring the Principal Amount and interest then outstanding on such date and all other amounts outstanding to be due and payable forthwith and to take any and all steps set out herein and otherwise available under applicable law to enforce the security granted to the Noteholder (an “**Act of Enforcement**”).

### 6.2 **Act of Enforcement**

Notwithstanding any other provisions contained in this Note, so long as any Notes remain outstanding, prior written consent or an affirmative vote of the holders of a majority of the then outstanding Notes shall be required for a Noteholder to exercise an Act of Enforcement.

### 6.3 **Upon Default**

Upon the occurrence of an Event of Default and at any time thereafter, so long as such Event of Default is continuing, the Noteholder may exercise any or all of its rights pursuant to this Note, including declaring the Principal Amount and interest then outstanding on such date and all other amounts outstanding to be due and payable forthwith.

### 6.4 **Waiver**

The Noteholder in its absolute discretion may, at any time and from time to time by written notice, waive any breach by the Company of any of its covenants or agreements herein. No failure or delay on the part of the Noteholder to exercise any right, remedy or power given herein or by any other existing or future agreement or now or hereafter existing by statute, at law or in equity will operate as a waiver thereof, nor will any single or partial exercise of any such right, remedy or power preclude any other exercise thereof or the exercise of any other such right, remedy or power, nor will any waiver by the Noteholder be deemed to be a waiver of any subsequent, similar or other event.

**ARTICLE 7  
OTHER AGREEMENTS**

**7.1 Withholding Taxes**

If the Company is obliged to withhold any payment hereunder on account of present or future taxes, duties, assessments or other governmental charges required by law, the Company shall make such withholding or deduction and pay the balance owing to the Noteholder.

**7.2 Amendment and Waiver**

Neither this Note nor any provision hereof may be amended, waived, discharged or terminated except by a document in writing executed by the party against whom enforcement of the amendment, waiver, discharge or termination is sought.

**7.3 Notices and Other Instruments**

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be in writing and shall be:

- (a) personally delivered to such party; or
- (b) except during a period of strike, lock-out or other postal disruption, sent by double registered mail, postage prepaid to the address of such party set forth on page one; or
- (c) sent by electronic transmission or other means of electronic communication to the address of such party set forth on page one;

and shall be deemed to have been received by such party on the earliest of the date of delivery under subsection 7.3(a), the actual date of receipt when mailed under subsection 7.3(b) and the Business Day following the date of communication under subsection 7.3(c). Any party may give written notice to the other parties of a change of address to some other address, in which event any communication shall thereafter be given to such party as hereinbefore provided, at the last such changed address of which the party communication has received written notice.

**7.4 Maximum Rate**

Notwithstanding any other provisions of this Note or any other agreement, the maximum amount (including interest, fees, bonus and any other consideration) payable to the Noteholder in connection with this Note and each part thereof shall not exceed the maximum allowable return permitted under the laws of the State of Ohio, and the provisions of this Note and all other existing and future agreements are hereby modified to the extent necessary to effect the foregoing.

**7.5 Assignment**

No party may assign its rights or benefits under this Note without the prior written consent of the other party, acting reasonably.

**7.6 Successors and Assigns**

This Note shall be binding upon the Company, its successors and permitted assigns, and shall enure to the benefit of the Noteholder, its successors and permitted assigns.

**7.7 Headings, etc.**

The division of this Note into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

7.8                   **Severability**

The provisions of this Note are intended to be severable. If any provision of this Note shall be deemed by any court of competent jurisdiction or held to be invalid or void or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

7.9                   **Noteholder's Rights and Remedies**

In addition to the foregoing without limitation: (i) the Noteholder's rights and remedies hereunder shall be cumulative and not exclusive of any rights or remedies which it would otherwise have; no delay or omission by the Noteholder in exercising or enforcing any of the Noteholder's rights and remedies hereunder shall operate as, or constitute, a waiver thereof; no waiver by the Noteholder of any Event of Default shall operate as a waiver of any other default hereunder; no single or partial exercise of any of the Noteholder's rights or remedies hereunder, and no express or implied agreement or transaction of whatever nature entered into between the Noteholder and any Person, at any time, shall preclude the other or further exercise of the Noteholder's rights and remedies hereunder; no waiver by the Noteholder of any of the Noteholder's rights and remedies hereunder on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver; and (ii) the Noteholder's rights and remedies hereunder may be exercised at such time or times and in such order of preference as the Noteholder may determine.

7.10                  **Modification**

From time to time the Company may modify the terms and conditions hereof for any purpose not inconsistent with the terms hereof, including the correction or rectification of any ambiguities, defective provisions, errors or omissions herein.

7.11                  **Governing Law**

This Note shall be governed by and construed in accordance with the laws of the State of Ohio.

[End of Schedule "A"]

## EXHIBIT “D”

### U.S. ACCREDITED INVESTOR CERTIFICATE

TO: VAPEN OHIO, LLC. (the “**Buyer**”)

AND TO: VEXT SCIENCE, INC. (the “**Buyer Parent**” and together with the Buyer, the “**Issuers**”)

Reference is made to the Membership Interest Purchase Agreement dated as of December 15, 2022 (the “**Agreement**”) to which the form of this U.S. Accredited Investor Certificate is annexed, and to which the undersigned (the “**Seller**”) is a party. The Seller is furnishing this U.S. Accredited Investor Certificate to Buyer pursuant to section 3.25(b) of the Agreement on the understanding that each of the Buyer and the Buyer Parent is relying on the representations and warranties of Seller contained herein. Upon execution of this U.S. Accredited Investor Certificate by the Seller, this U.S. Accredited Investor Certificate shall be incorporated into and form an integral part of the Agreement. All capitalized terms used herein, unless otherwise defined, have the meanings ascribed thereto in the Agreement.

In addition to the covenants, representations and warranties contained in the Agreement, the Seller covenants, represents and warrants to the Issuers that the Seller is an “accredited investor”, as defined in Rule 501(a) of Regulation D under the Securities Act (an “**Accredited Investor**”) by virtue of satisfying one or more of the categories indicated below (please initial on the appropriate line or lines):

- \_\_\_\_\_ Category 1. An organization described in Section 501(c)(3) of the United States *Internal Revenue Code*, a corporation, a Massachusetts or similar business trust, a partnership, or a limited liability company, not formed for the specific purpose of acquiring the securities, with total assets in excess of US\$5,000,000.
- \_\_\_\_\_ Category 2. A natural person whose individual net worth, or joint net worth with that person’s spouse or spousal equivalent (being a cohabitant occupying a relationship generally equivalent to that of a spouse), at the time of that person’s purchase exceeds US\$1,000,000 (**note:** for the purposes of calculating net worth: (i) the person’s primary residence shall not be included as an asset; (ii) indebtedness that is secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time of the offer and sale of securities contemplated by the Agreement, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the offer and sale of the securities contemplated by the Agreement exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); (iii) indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability; (iv) for the purposes of calculating joint net worth of the person and that person’s spouse or spousal equivalent, (A) joint net worth can be the aggregate net worth of the investor and spouse or spousal equivalent, and (B) assets need not be held jointly to be included in the calculation; and reliance by the person and that person’s spouse or spousal equivalent on the joint net worth standard does not require that the securities be purchased jointly); or

- \_\_\_\_\_ Category 3. A natural person who had an individual income in excess of US\$200,000 in each of the two most recent years or joint income with that person’s spouse or spousal equivalent in excess of US\$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- \_\_\_\_\_ Category 4. An entity in which all of the equity owners are Accredited Investors.

*If you checked Category 4, please indicate the name and category of accredited investor (by reference to the applicable category number herein) of each equity owner:*

Name of Equity Owner	Category of Accredited Investor

It is permissible to look through various forms of equity ownership to natural persons in determining the Accredited Investor status of entities under this category. If those natural persons are themselves Accredited Investors, and if all other equity owners of the entity seeking Accredited Investor status are Accredited Investors, then this category will be available.

- \_\_\_\_\_ Category 5. A natural person holding in good standing one or more of the following professional certifications or designations or credentials from an accredited educational institution that the United States Securities and Exchange Commission has designated as qualifying an individual for Accredited Investor status: The General Securities Representative license (Series 7), the Private Securities Offerings Representative license (Series 82), and the Licensed Investment Adviser Representative (Series 65).

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this U.S. Accredited Investor Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**If a Corporation, Partnership or Other Entity:**

**If an Individual:**

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title of Signatory