

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): December 9, 2022

**Motorsport Games Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-39868**  
(Commission  
File Number)

**86-1791356**  
(I.R.S. Employer  
Identification No.)

**5972 NE 4th Avenue**  
**Miami, FL**  
(Address of principal executive offices)

**33137**  
(Zip Code)

Registrant's telephone number, including area code: **(305) 507-8799**

**N/A**  
(Former name or former address, if changed since last report)

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

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, \$0.0001 par value per share	MSGM	The Nasdaq Stock Market LLC (The Nasdaq Capital Market)

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

Emerging growth company

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

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

On December 9, 2022, Motorsport Games Inc. (the “Company”) entered into a purchase agreement (the “Purchase Agreement”) with Alumni Capital LP (“Alumni Capital”), which provides that, upon the terms and subject to the conditions and limitations set forth therein, the Company may sell to Alumni Capital up to \$2,000,000 (the “Initial Purchase Amount”) of shares of its Class A common stock, par value \$0.0001 per share (the “Common Stock”), until December 31, 2023, which amount may increase at the Company’s option to up to \$10,000,000 of shares of Common Stock (collectively, the “Purchase Shares”).

Pursuant to the terms of the Purchase Agreement, the Company has the right, but not the obligation, at any time until December 31, 2023, to require Alumni Capital to purchase the number of shares of Common Stock (the “Purchase Notice Shares”) set forth on a written notice from the Company (the “Purchase Notice”). The Company will deliver the Purchase Notice Shares concurrently with the Purchase Notice, which will be deemed delivered on the same business day if Alumni Capital receives the Purchase Notice Shares and the Purchase Notice by 8:00 a.m., New York time, or on the next business day if Alumni Capital receives the Purchase Notice Shares and the Purchase Notice after 8:00 a.m., New York time (the “Purchase Notice Date”). For each Purchase Notice, the Company has the right to select one of the following purchase price options at which to sell the Purchase Notice Shares: (1) the lesser of (i) the volume-weighted average price (“VWAP”) of the Common Stock on the Nasdaq Stock Market for the five business days prior to a Purchase Notice Date multiplied by 90% or (ii) the VWAP of the Common Stock for the business day immediately prior to a Purchase Notice Date multiplied by 90% (“Purchase Price I”), or (2) the lowest daily VWAP of the Common Stock for the four business days after a Purchase Notice Date multiplied by 96% (“Purchase Price II”). Alumni Capital’s committed obligations under a Purchase Notice cannot exceed, in the case that the Company has selected Purchase Price I, the lesser of (i) \$500,000 or (ii) 100% of the median daily trading volume of the Common Stock over the most recent five business days prior to the Purchase Notice Date (the “ADTV”), or, in the case the Company has selected Purchase Price II, the lesser of (i) \$1,000,000 or (ii) the greater of (a) 300% of the ADTV or (b) \$300,000. Alumni Capital may not assign its rights and obligations under the Purchase Agreement.

The aggregate number of shares that the Company can sell to Alumni Capital under the Purchase Agreement may in no case exceed 373,284 shares (subject to adjustment) of Common Stock (which is equal to approximately 19.99% of the shares of Common Stock and the Company’s Class B common stock, par value \$0.0001 per share, combined, outstanding prior to the execution of the Purchase Agreement) (the “Exchange Cap”), unless shareholder approval is obtained to issue Purchase Shares above the Exchange Cap, in which case the Exchange Cap will no longer apply. In all instances, the Company may not sell shares of its Common Stock to Alumni Capital and its affiliates under the Purchase Agreement if it would result in Alumni Capital beneficially owning more than 9.99% of the outstanding shares of Common Stock.

The Company is issuing \$40,000 of shares of Common Stock (the “Initial Commitment Shares”) to Alumni Capital as consideration for Alumni Capital’s commitment to purchase shares of Common Stock at the Company’s direction from time to time under the Purchase Agreement. In the event that the Company exercises its option to increase the Initial Purchase Amount, the Company will issue shares of Common Stock equal to two percent of such increase (together with the Initial Commitment Shares, the “Commitment Shares,” and, together with the Purchase Shares, the “Shares”) to Alumni Capital as consideration for its commitment to purchase shares of Common Stock pursuant to the Purchase Agreement. The Purchase Agreement contains customary representations, warranties, covenants, closing conditions, indemnification and termination provisions. Alumni Capital has covenanted not to cause or engage in any manner whatsoever, any short selling or hedging of the Common Stock.

There are no limitations on the use of proceeds, financial or business covenants, restrictions on future financings, rights of first refusal, participation rights, penalties or liquidated damages in the Purchase Agreement. The Company may deliver Purchase Notices under the Purchase Agreement from time to time and under the limitations contained in the Purchase Agreement. Any proceeds that the Company receives under the Purchase Agreement are expected to be used for general corporate purposes, which may include product development and other business purposes.

The issuance of the shares of Common Stock has been registered pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-262462) (the “Registration Statement”), and the related base prospectus included in the Registration Statement, as supplemented by a prospectus supplement filed on December 9, 2022. Snell & Wilmer L.L.P., counsel to the Company, has issued a legal opinion relating to the shares of Common Stock issuable under the Purchase Agreement. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

The foregoing summary is incomplete and qualified in its entirety by reference to the Purchase Agreement, which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

The information contained in this Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy shares of Common Stock discussed herein, nor shall there be any offer, solicitation or sale of the shares in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

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## **Item 7.01. Regulation FD Disclosure.**

On December 9, 2022, the Company issued a press release with respect to the transactions described above, which is attached hereto as Exhibit 99.1.

The information in this Item 7.01, including Exhibit 99.1, is furnished and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to liabilities under that section, and shall not be deemed to be incorporated by reference into any filing or other document under the Securities Act of 1933, as amended (the “Securities Act”) or the Exchange Act, regardless of any general incorporation language in such filings except as shall be expressly set forth by specific reference in such a filing or document. This report will not be deemed an admission as to the materiality of any information of the information contained in this Item 7.01, including Exhibit 99.1.

### **Cautionary Statement Regarding Forward-Looking Statements**

This report contains certain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act, which include, but are not limited to, statements related to the Company’s ability to raise funds under the Purchase Agreement or the Company’s anticipated use of the proceeds from the offering described above, if any, and the timing thereof. Some of the forward-looking statements can be identified by the use of forward-looking words. Statements that are not historical in nature, including the words “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential” or “continue” or the negative of these terms or other similar expressions. All forward-looking statements are based upon management estimates and forecasts and reflect the views, assumptions, expectations, and opinions of the Company as of the date of this report. You should exercise caution in interpreting and relying on forward-looking statements because they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond the Company’s control and could materially affect actual results, performance or achievements. The forward-looking statements and projections contained in this report are subject to a number of factors, risks and uncertainties, some of which are not currently known to the Company, that may cause the Company’s actual results, performance or financial condition to be materially different from the expectations of future results, performance of financial condition. Examples of such risks and uncertainties include, but are not limited to, sales of shares under the Purchase Agreement impacting the price of the Company’s Class A common stock; the Company’s inability to raise funds under the Purchase Agreement due to certain limitations under the Purchase Agreement; less than expected results from the proceeds raised from any transaction under the Purchase Agreement; difficulties, delays or less than expected results in achieving the Company’s growth plans, objectives and expectations, such as due to a slower than anticipated economic recovery and/or the Company’s inability, in whole or in part, to continue to execute its business strategies and plans; difficulties, delays in or unanticipated events that may impact the timing and scope of new or planned products, features, events or other offerings, such as due to difficulties or delays in using its product development personnel in Russia due to the Russia invasion of Ukraine and the related sanctions and/or more restrictive sanctions rendering transacting in the region more difficult or costly and/or difficulties and/or delays arising out of any resurgence of the ongoing and prolonged COVID-19 pandemic; less than expected benefits from implementing the Company’s management strategies and/or adverse economic, market and geopolitical conditions that negatively impact industry trends, such as significant changes in the labor markets, an extended or higher than expected inflationary environment (such as the impact on consumer discretionary spending as a result of significant increases in energy and gas prices which have been increasing since early in 2020), a higher interest rate environment, tax increases impacting consumer discretionary spending and or quantitative easing that results in higher interest rates that negatively impact consumers’ discretionary spending, or adverse developments relating to the Russia invasion of Ukraine; greater than anticipated negative operating cash flows such as due to higher than expected development costs, higher interest rates and/or higher inflation; difficulties and/or delays in resolving our liquidity and capital requirements, including without limitation, difficulties in securing funding that is on commercially acceptable terms to us or at all; and other risks and uncertainties detailed from time to time in the Company’s filings with the SEC, including its Annual Report on Form 10-K for the fiscal year ended December 31, 2021, its Quarterly Reports on Form 10-Q filed with the SEC during 2022, as well as in its subsequent filings with the SEC. Although such forward-looking statements have been made in good faith and are based on assumptions that the Company believes to be reasonable, there is no assurance that the Company will be able to raise funds under the Purchase Agreement when desired based on the various terms and conditions in the Purchase Agreement that may restrict the Company’s ability to require Alumni Capital to buy shares at certain times, or that other expected results will be achieved. The Company’s actual results may differ materially from the results discussed in forward-looking statements. Readers are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made. The Company does not undertake any obligations to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

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

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
5.1	<a href="#">Opinion of Snell &amp; Wilmer L.L.P.</a>
10.1	<a href="#">Purchase Agreement, dated as of December 9, 2022, between Motorsport Games Inc. and Alumni Capital LP</a>
23.1	<a href="#">Consent of Snell &amp; Wilmer L.L.P. (included in Exhibit 5.1)</a>
99.1	<a href="#">Press Release dated December 9, 2022</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURES**

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

Motorsport Games Inc.

Date: December 9, 2022

By: /s/ Dmitry Kozko

Dmitry Kozko  
Chief Executive Officer

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## EXHIBIT INDEX

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104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

# Snell & Wilmer

600 ANTON BLVD, SUITE 1400  
COSTA MESA, CA 92626-7689  
714.427.7000 P  
714.427.7799 F

December 9, 2022

Motorsport Games Inc.  
5972 NE 4th Avenue  
Miami, FL 33137

Ladies and Gentlemen:

We have acted as counsel to Motorsport Games Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Prospectus Supplement (the "Prospectus Supplement") on the date hereof pursuant to the Securities Act of 1933, as amended (the "Securities Act"), which is part of the Company's Registration Statement on Form S-3 (Registration No. 333-262462) (the "Registration Statement") and base prospectus (the "Base Prospectus") that were filed with the Commission on February 1, 2022 and became effective on February 10, 2022, relating to the issuance and sale by the Company to Alumni Capital LP (the "Investor") of: (i) up to \$10,160,000 in shares (the "Purchase Shares") of the Company's Class A Common Stock, par value \$0.0001 per share (the "Common Stock"), and (ii) \$40,000 in shares of Common Stock (together with the Purchase Shares, the "Shares") pursuant to that certain Purchase Agreement, dated December 8, 2022, by and between the Company and the Investor (the "Purchase Agreement").

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

In rendering the opinions stated herein, we have examined and relied upon the following:

- A. the Purchase Agreement;
- B. the Registration Statement;
- C. the Base Prospectus;
- D. the Prospectus Supplement;
- E. an executed copy of a certificate of Dmitry Kozko, Chief Executive Officer of the Company, dated as of a recent date (the "Officer's Certificate");

ALBUQUERQUE BOISE DENVER LAS VEGAS LOS ANGELES LOS CABOS ORANGE COUNTY  
PHOENIX PORTLAND RENO SALT LAKE CITY SAN DIEGO SEATTLE TUCSON WASHINGTON, D.C.

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Motorsport Games Inc.

December 9, 2022

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- F. the Company's Certificate of Incorporation, as amended by the Certificate of Amendment to the Certificate of Incorporation, as currently in effect and as certified pursuant to the Officer's Certificate;
- G. the Company's Bylaws, as amended by Amendment No. 1 to the Bylaws, as currently in effect and as certified pursuant to the Officer's Certificate; and
- H. a copy of the resolutions of the board of directors of the Company, relating to the adoption, approval, authorization and/or ratification of the transactions contemplated by the Purchase Agreement and the execution and delivery of the Purchase Agreement.

We have also examined instruments, documents, certificates and records that we have deemed relevant and necessary for the basis of our opinions hereinafter expressed. In such examination, we have assumed: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed; (iv) at the time any Shares are sold pursuant to the Registration Statement, the Registration Statement and any supplements and amendments thereto (including post-effective amendments) will be effective under the Securities Act and will comply with all applicable laws; (v) that the Shares will be issued and sold in compliance with applicable U.S. federal and state securities laws and in the manner stated in the Registration Statement, the Base Prospectus, and the Prospectus Supplement; and (vi) the legal capacity of all natural persons. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

Based on such examination, and subject to the limitations, qualifications, exceptions and assumptions expressed herein, we are of the opinion that the issuance of the Shares has been duly authorized and, upon issuance of the Shares pursuant to the terms of the Purchase Agreement and the receipt by the Company of the consideration for the Shares pursuant to the terms of the Purchase Agreement, the Shares will be validly issued, fully paid, and nonassessable.

We express no opinion as to the laws of any jurisdiction other than the General Corporation Law of the State of Delaware.

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Motorsport Games Inc.  
December 9, 2022  
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We hereby consent to the filing of this opinion letter as an exhibit to the Company's Current Report on Form 8-K (the "Current Report"), dated December 9, 2022, relating to the Shares. We also consent to the reference to our firm under the heading "Legal Matters" in the Prospectus Supplement. In giving such consent, we do not believe that we are "experts" within the meaning of such term as used in the Securities Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Current Report, including this opinion letter as an exhibit. In giving such consent, we do not thereby concede that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

This opinion letter is given as of the date hereof, and we express no opinion as to the effect of subsequent events or changes in law occurring or becoming effective after the date hereof. We assume no obligation to update this opinion letter or otherwise advise you with respect to any facts or circumstances or changes in law that may hereafter occur or come to our attention (even though the change may affect the legal conclusions stated in this opinion letter).

Very truly yours,

/s/ Snell & Wilmer L.L.P.

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**PURCHASE AGREEMENT**

**PURCHASE AGREEMENT** (the “Agreement”), dated as of December 9, 2022, by and between MOTORSPORT GAMES INC., a Delaware corporation (the “Company”), and ALUMNI CAPITAL LP, a Delaware limited partnership (the “Investor”).

**RECITALS**

**WHEREAS**, Subject to the terms and conditions set forth in this Agreement, the Company wishes to sell to the Investor, and the Investor wishes to buy from the Company, up to \$2,000,000 in registered shares of the Company’s Class A Common Stock, \$0.0001 par value per share (the “Common Stock”). The shares of Common Stock to be acquired hereunder are referred to herein as the “Securities.”

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

**ARTICLE I  
CERTAIN DEFINITIONS**

Section 1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings specified or indicated (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Additional Commitment Shares” shall have the meaning specified in Section 6.4.

“Additional Investment Amount” shall have the meaning specified in Section 2.1(c).

“Affiliate” shall mean, with respect to a Party, any individual, a corporation or any other legal entity, directly or indirectly, controlling, controlled by or under common control with such Party. For purpose of this definition, the term “*control*,” as used with respect to any corporation or other entity, means (a) direct or indirect ownership of fifty percent (50%) or more of the securities or other ownership interests representing the equity voting stock or general partnership or membership interest of such corporation or other entity or (b) the power to direct or cause the direction of the management or policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning specified in the preamble hereof.

“Average Daily Trading Volume” shall mean the median daily trading volume of the Company’s Common Stock over the most recent five (5) Business Days prior to the respective Purchase Notice Date, as reported by Bloomberg.

“Bankruptcy Law” means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

“Base Registration Statement” shall have the meaning specified in Section 4.14.

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“Beneficial Ownership Limitation” shall have the meaning specified in Section 7.2(g).

“Bloomberg” means Bloomberg, L.P.

“Business Day” shall mean a day on which the Principal Market shall be open for business.

“Clearing Costs” shall mean all of the Investor’s broker and Transfer Agent costs with respect to the deposit of the Purchase Notice Shares.

“Closing” shall mean any one of the closings of a purchase and sale of shares of Common Stock pursuant to Section 2.2.

“Closing Date” shall mean the date a Closing occurs.

“Commitment Period” shall mean the period commencing on the Execution Date and ending on the earlier of (i) December 31, 2023, or (ii) the date on which the Investor shall have purchased Purchase Notice Shares pursuant to this Agreement for an aggregate purchase price of the Investment Amount.

“Commitment Shares” means the shares of the Company’s Common Stock to be issued by the Company to the Investor pursuant to Section 6.4.

“Common Stock” shall mean the Company’s Class A common stock, \$0.0001 par value per share.

“Common Stock Equivalents” means any securities of the Company entitling the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company” shall have the meaning specified in the preamble to this Agreement.

“Custodian” means any receiver, trustee, assignee, liquidator, or similar official under any Bankruptcy Law.

“Current Report” has the meaning set forth in Section 6.2.

“Damages” shall mean any loss, claim, damage, liability, cost and expense (including, without limitation, reasonable attorneys’ fees and disbursements and costs and expenses of expert witnesses and investigation).

“DTC” shall mean The Depository Trust Company, or any successor performing substantially the same function for the Company.

“DTC/FAST Program” shall mean the DTC’s Fast Automated Securities Transfer Program.

“DWAC” shall mean Deposit Withdrawal at Custodian as defined by the DTC.

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“DWAC Eligible” shall mean that (a) the Common Stock is eligible at DTC for full services pursuant to DTC’s operational arrangements, including, without limitation, transfer through DTC’s DWAC system, (b) the Company has been approved (without revocation) by the DTC’s underwriting department, (c) the Transfer Agent is approved as an agent in the DTC/FAST Program, (d) the Purchase Notice Shares and Commitment Shares are otherwise eligible for delivery via DWAC, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Purchase Notice Shares and Commitment Shares, as applicable, via DWAC.

“DWAC Shares” means shares of Common Stock that are (i) issued in electronic form, (ii) freely tradable and transferable and without restriction on resale and (iii) timely credited by the Company to the Investor’s or its designee’s specified DWAC account with DTC under the DTC/FAST Program, or any similar program hereafter adopted by DTC performing substantially the same function.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exchange Cap” shall have the meaning set forth in Section 7.2(h).

“Execution Date” shall mean the date of the last signature of this Agreement.

“Initial Commitment Shares” shall have the meaning set forth in Section 6.4.

“Investment Amount” shall initially mean \$2,000,000, subject to increase as set forth in Section 2.1(c).

“Investor” shall have the meaning specified in the preamble to this Agreement.

“Lien” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right, or other restriction.

“Material Adverse Effect” shall mean any effect on the business, operations, properties, or financial condition of the Company that is material and adverse to the Company and/or any condition, circumstance, or situation that would prohibit or otherwise materially interfere with the ability of the Company to enter into and perform its obligations under any Transaction Document.

“Party” shall mean a party to this Agreement.

“Person” shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Principal Market” shall mean any of the national exchanges (i.e. NYSE, AMEX, Nasdaq), or principal quotation systems (i.e. OTCQX, OTCQB, OTC Pink, the OTC Bulletin Board), or other principal exchange or recognized quotation system which is at the time the principal trading platform or market for the Common Stock.

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“Purchase Notice Amount” shall mean the Purchase Notice Shares referenced in the Purchase Notice multiplied by the applicable purchase price (Purchase Price I or Purchase Price II) in accordance with Section 2.1.

“Purchase Notice” shall mean a written notice from Company, substantially in the form of Exhibit A hereto, to the Investor setting forth the Purchase Notice Shares which the Company requires the Investor to purchase pursuant to the terms of this Agreement.

“Purchase Notice Date” shall have the meaning specified in Section 2.2(a).

“Purchase Notice Limitation” shall mean either Purchase Notice Limitation Option I for a Purchase Notice electing Purchase Price I or Purchase Notice Limitation Option II for a Purchase Notice electing Purchase Price II.

“Purchase Notice Limitation Option I” shall mean the lesser of (i) \$500,000 or (ii) 100% of the Average Daily Trading Volume.

“Purchase Notice Limitation Option II” shall mean the lesser of (i) \$1,000,000 or (ii) the greater of (a) 300% of the Average Daily Trading Volume or (b) \$300,000.

“Purchase Notice Shares” shall mean all shares of Common Stock that the Company shall be entitled to issue as set forth in all Purchase Notices in accordance with the terms and conditions of this Agreement.

“Purchase Price” means either Purchase Price I or Purchase Price II, as elected by the Company on each Purchase Notice.

“Purchase Price I” shall mean the lesser of (i) the VWAP of the Common Stock for the five Business Days prior to a Purchase Notice Date multiplied by 90% or (ii) the VWAP of the Common Stock for the Business Day immediately prior to a Purchase Notice Date multiplied by 90%. Any exercise by the Company at Purchase Price I will be subject to the Purchase Notice Limitation Option I.

“Purchase Price II” shall mean the lowest daily VWAP of the Common Stock for the four (4) Business Days after a Purchase Notice Date multiplied by 96%. Any exercise by the Company at Purchase Price II will be subject to the Purchase Notice Limitation Option II.

“Registration Statement” shall have the meaning specified in Section 6.3.

“Regulation D” shall mean Regulation D promulgated under the Securities Act.

“Rule 144” shall mean Rule 144 under the Securities Act or any similar provision then in force under the Securities Act.

“SEC” shall mean the United States Securities and Exchange Commission.

“SEC Documents” shall have the meaning specified in Section 4.5.

“Securities” mean the Purchase Notice Shares and the Commitment Shares to be issued to the Investor pursuant to the terms of this Agreement.

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“Securities Act” shall mean the Securities Act of 1933, as amended.

“Subsidiary” means any Person the Company wholly-owns or controls, or in which the Company, directly or indirectly, owns a majority of the voting stock or similar voting interest, in each case that would be disclosable pursuant to Item 601(b)(21) of Regulation S-K promulgated under the Securities Act.

“Transaction Documents” shall mean this Agreement and all exhibits hereto.

“Transfer Agent” shall mean the current transfer agent of the Company, and any successor transfer agent of the Company.

“VWAP” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its “VWAP” function (set to 9:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Investor. If the Company and the Investor are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 10.15. All such determinations shall be appropriately adjusted for any share dividend, share split, share combination, recapitalization, or other similar transaction during such period.

## ARTICLE II PURCHASE AND SALE OF COMMON STOCK

### Section 2.1 PURCHASE NOTICES.

(a) PURCHASE NOTICES. Subject to the conditions set forth herein, at any time during the Commitment Period, the Company shall have the right, but not the obligation, to direct the Investor, by its delivery to the Investor of a Purchase Notice from time to time, to purchase, and the Investor shall have the obligation to purchase from the Company, the number of Purchase Notice Shares set forth on the Purchase Notice at the Purchase Price elected pursuant to Section 2.1(b), provided that the amount of Purchase Notice Shares shall not exceed the Purchase Notice Limitation applicable to such Purchase Notice or the Beneficial Ownership Limitation set forth in Section 7.2(g). At its option, on the Business Day prior to a Purchase Notice Date, the Company may request, in writing, the Investor to provide to the Company, and the Investor shall promptly provide to the Company, the number of shares of Common Stock then owned by the Investor beneficially or deemed beneficially owned by the Investor, as determined in accordance with Section 13 of the Exchange Act, solely for the purpose of determining the amount of Purchase Notice Shares that may be set forth on the Purchase Notice. The Company may not deliver a subsequent Purchase Notice until the Closing of an active Purchase Notice, except if waived by the Investor in writing.

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(b) PURCHASE PRICE ELECTION. For each Purchase Notice the Company shall have the right to select either Purchase Price I or Purchase Price II at which to sell the Purchase Notice Shares subject to such Purchase Notice.

(c) OPTION TO INCREASE INVESTMENT AMOUNT. At any time before the end of the Commitment Period, the Company shall have the right, but not the obligation, to increase the Investment Amount to an amount not to exceed \$10,000,000 in the aggregate by providing written notice of the Company's election to increase the Investment Amount, which shall include the amount of the increase (an "Additional Investment Amount") and the revised aggregate Investment Amount, to the Investor by email at its email address set forth in Section 10.16. Such increase in Investment Amount shall become effective upon the Company's issuance and delivery to Investor of Additional Commitment Shares pursuant to Section 6.4.

#### Section 2.2 MECHANICS.

(a) PURCHASE NOTICE. In accordance with Section 2.1 and subject to the satisfaction of the conditions set forth in Section 7.2, the Company shall deliver the Purchase Notice Shares to the Investor pursuant to Section 2.2(b) alongside the delivery of each Purchase Notice by email at the Investor's email address set forth in Section 10.16. A Purchase Notice shall be deemed delivered on (i) the Business Day that both the Purchase Notice Shares are received and the Purchase Notice has been received by email by the Investor if both conditions are met on or prior to 8:00 a.m. New York time or (ii) the next Business Day if the conditions are met after 8:00 a.m. New York time on a Business Day or at any time on a day which is not a Business Day (the "Purchase Notice Date").

(b) DELIVERY OF PURCHASE NOTICE SHARES. No later than 8:00 a.m. New York time on the Purchase Notice Date, the Company shall deliver the Purchase Notice Shares either (i) as DWAC Shares to the Investor, (ii) to Investor's account with the Company's Transfer Agent through the Direct Registration System ("DRS"), or (iii) a book-entry statement evidencing that the Purchase Notice Shares have been issued to the Investor in book-entry form. If the Purchase Notice Shares related to the applicable Purchase Notice are delivered after 8:00 a.m. New York time on the Purchase Notice Date, then the Purchase Notice Date shall be deemed to be the next Business Day. If the Purchase Notice Shares related to the applicable Purchase Notice are delivered on or prior to 8:00 a.m. New York time on any date that is after the Purchase Notice Date, then the Purchase Notice Date shall be deemed to be the Business Day the Purchase Notice Shares are delivered. If the Purchase Notice Shares related to the applicable Purchase Notice are delivered after 8:00 a.m. New York time on any date that is after the Purchase Notice Date, then the Purchase Notice Date shall be deemed to be the Business Day immediately following the date the Purchase Notice Shares are delivered. For the avoidance of doubt, any delay in the delivery to the Investor of the Purchase Notice Shares shall not be deemed a default or breach.

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(c) CLOSING – PURCHASE PRICE I. The Closing of a Purchase Notice where Purchase Price I is selected shall occur no later than three Business Days after a Purchase Notice Date. No later than 5:00 p.m. New York time on the applicable Closing Date, the Investor shall deliver to the Company the applicable Purchase Price for the Purchase Notice Shares by wire transfer of immediately available funds to an account designated by the Company.

(d) The Closing of a Purchase Notice where Purchase Price II is selected shall occur no later than five Business Days after a Purchase Notice Date. No later than 5:00 p.m. New York time on the applicable Closing Date, the Investor shall deliver to the Company the applicable Purchase Price for the Purchase Notice Shares by wire transfer of immediately available funds to an account designated by the Company.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF INVESTOR**

The Investor represents and warrants the following to the Company:

Section 3.1 INTENT. The Investor is entering into this Agreement for its own account and the Investor has no present arrangement (whether or not legally binding) at any time to sell the Securities to or through any Person in violation of the Securities Act or any applicable state securities laws; provided, however, that the Investor reserves the right to dispose of the Securities at any time in accordance with federal and state securities laws applicable to such disposition.

Section 3.2 NO LEGAL ADVICE FROM THE COMPANY. The Investor acknowledges that it has had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. The Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of its representatives or agents for legal, tax or investment advice with respect to this investment, the transactions contemplated by this Agreement or the securities laws of any jurisdiction.

Section 3.3 ACCREDITED INVESTOR. The Investor is an accredited investor as defined in Rule 501(a)(3) of Regulation D, and the Investor has such experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in Securities. The Investor acknowledges that an investment in the Securities is speculative and involves a high degree of risk.

Section 3.4 AUTHORITY. The Investor has the requisite power and authority to enter into and perform its obligations under the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and no further consent or authorization of the Investor is required. The Transaction Documents to which it is a party has been duly executed by the Investor, and when delivered by the Investor in accordance with the terms hereof, will constitute the valid and binding obligation of the Investor enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

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Section 3.5 NOT AN AFFILIATE. The Investor is not an officer, director or “affiliate” (as that term is defined in Rule 405 of the Securities Act) of the Company.

Section 3.6 ORGANIZATION AND STANDING. The Investor is an entity duly formed, validly existing, and in good standing under the laws of the State of Delaware with full right and limited partnership or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents.

Section 3.7 ABSENCE OF CONFLICTS. The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby and compliance with the requirements hereof and thereof, will not (a) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Investor, (b) violate any provision of any indenture, instrument or agreement to which the Investor is a party or is subject, or by which the Investor or any of its assets is bound, or conflict with or constitute a material default thereunder, (c) result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement, or constitute a breach of any fiduciary duty owed by the Investor to any third party, or (d) require the approval of any third-party (that has not been obtained) pursuant to any material contract, instrument, agreement, relationship or legal obligation to which the Investor is subject or to which any of its assets, operations or management may be subject.

Section 3.8 DISCLOSURE; ACCESS TO INFORMATION. The Investor had an opportunity to review copies of the SEC Documents filed on behalf of the Company and has had access to all publicly available information with respect to the Company. The Investor understands that its investment in the Securities involves a high degree of risk. The Investor is able to bear the economic risk of an investment in the Securities including a total loss. The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

Section 3.9 MANNER OF SALE. At no time was the Investor presented with or solicited by or through any leaflet, public promotional meeting, television advertisement or any other form of general solicitation or advertising.

Section 3.10 EFFECTIVE REGISTRATION STATEMENT. The Purchase Notice Shares and the Commitment Shares are being offered pursuant to the Base Registration Statement, the Prospectus and the Prospectus Supplement (all as defined herein), and Investor is solely relying on the Registration Statement, the Prospectus, the Prospectus Supplement, and the SEC Documents, in determining whether to acquire the Securities.

Section 3.11 NO PRIOR SHORT SELLING. At no time prior to the date of this Agreement has any of the Investor, its agents, representatives or affiliates engaged in or effected, in any manner whatsoever, directly or indirectly, any (i) “short sale” (as such term is defined in Section 242.200 of Regulation SHO of the Exchange Act) of the Common Stock or (ii) hedging transaction which establishes a net short position with respect to the Common Stock or any other Company’s securities.

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

Except as set forth in the SEC Documents, the Company represents and warrants the following to the Investor, as of the Execution Date:

Section 4.1 **ORGANIZATION OF THE COMPANY.** The Company is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation or default of any of the provisions of its certificate of incorporation, bylaws or other organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification. The Company has Subsidiaries as disclosed in the SEC Documents.

Section 4.2 **AUTHORITY.** The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents. The execution and delivery of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and no further consent or authorization of the Company or its Board of Directors or stockholders is required. The Transaction Documents have been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

Section 4.3 **CAPITALIZATION.** As of the date hereof, the authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, par value of \$0.0001 per share, of which 1,167,355 shares Stock are issued and outstanding, 7,000,000 shares of Class B Common Stock, par value of \$0.0001 per share, of which 700,000 shares are issued and outstanding, and 1,000,000 shares of Preferred Stock, par value of \$0.0001 per share, of which no shares are issued and outstanding. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in the SEC Documents and this Agreement, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investor) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

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Section 4.4 LISTING AND MAINTENANCE REQUIREMENTS. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the SEC is contemplating terminating such registration. Except as disclosed in the SEC Documents, the Company has not, in the twelve (12) months preceding the date hereof, received notice from the Principal Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Principal Market. Except as disclosed in the SEC Documents, the Company is and has no reason to believe that it will not in the foreseeable future continue to be in compliance with all such listing and maintenance requirements.

Section 4.5 SEC DOCUMENTS; DISCLOSURE. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) thereof, for the one (1) year preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Documents”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Documents prior to the expiration of any such extension. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and other federal laws, rules and regulations applicable to such SEC Documents, and none of the SEC Documents when filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents comply as to form and substance in all material respects with applicable accounting requirements and the published rules and regulations of the SEC or other applicable rules and regulations with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except (a) as may be otherwise indicated in such financial statements or the notes thereto or (b) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments). Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company.

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Section 4.6 VALID ISSUANCES. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid, and non-assessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents.

Section 4.7 NO CONFLICTS. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Purchase Notice Shares and Commitment Shares, do not and will not: (a) result in a violation of the Company's certificate or articles of incorporation, by-laws or other organizational or charter documents, (b) conflict with, or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, instrument or any "lock-up" or similar provision of any underwriting or similar agreement to which the Company is a party, or (c) result in a violation of any federal, state or local law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect) nor is the Company otherwise in violation of, conflict with or in default under any of the foregoing. The business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for possible violations that either singly or in the aggregate do not and will not have a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under the Transaction Documents (other than (i) any SEC or state securities filings that may be required to be made by the Company in connection with the execution of this Agreement or the issuance of Securities pursuant hereto, or (ii) the filing of a Listing of Additional Shares Notification Form with the Principal Market); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of Investor herein.

Section 4.8 NO MATERIAL ADVERSE EFFECT. No event has occurred that would have a Material Adverse Effect on the Company that has not been disclosed in subsequent SEC Documents.

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Section 4.9 LITIGATION AND OTHER PROCEEDINGS. Except as disclosed in the SEC Documents, there are no material actions, suits, investigations, SEC inquiries, FINRA inquiries, NASDAQ inquiries, or similar proceedings (however any governmental agency may name them) pending or, to the actual knowledge of the Company, threatened against or affecting the Company or its properties, nor has the Company received any written or oral notice of any such action, suit, proceeding, SEC inquiry, FINRA inquiry, NASDAQ inquiry or investigation, which would have a Material Adverse Effect. No judgment, order, writ, injunction or decree or award against the Company has been issued by or, to the actual knowledge of the Company, requested of any court, arbitrator or governmental agency which would have a Material Adverse Effect. There has not been, and to the actual knowledge of the Company, there is no pending investigation by the SEC involving the Company or any current officer or director of the Company.

Section 4.10 ACKNOWLEDGMENT REGARDING INVESTOR'S PURCHASE OF SECURITIES. Based solely on the Investor's representation and warranties, the Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby and thereby and that the Investor is not (i) an officer or director of the Company, or (ii) an "affiliate" (as defined in Rule 144) of the Company. The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and thereby, and any advice given by the Investor or any of its representatives or agents in connection with the Agreement and the transactions contemplated hereby and thereby is merely incidental to the Investor's purchase of the Purchase Notice Shares. The Company further represents to the Investor that the Company's decision to enter into this Agreement has been based solely on the independent evaluation by the Company and its representatives.

Section 4.11 NO GENERAL SOLICITATION. Neither the Company, nor any Person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities act) in connection with the offer or sale of the Securities.

Section 4.12 NO INTEGRATED OFFERING. None of the Company, its Affiliates, and any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings for purposes of any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated, but excluding stockholder consents required to authorize and issue the Securities or waive any anti-dilution provisions in connection therewith.

Section 4.13 PLACEMENT AGENT; OTHER COVERED PERSONS. The Company has not engaged any Person to act as a placement agent, underwriter, broker, dealer, or finder in connection with the sale of the Securities hereunder. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of the Investor in connection with the sale of any Securities.

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Section 4.14 REGISTRATION STATEMENT. The Company has prepared and filed a Registration Statement on Form S-3 with the SEC in accordance with the provisions of the Securities Act, which was declared effective by order of the SEC on February 10, 2022 (File No. 333-262462) (the “Base Registration Statement”). The Base Registration Statement is effective under the Securities Act and the Company has not received any written notice that the SEC has issued or intends to issue a stop order or other similar order with respect to the Base Registration Statement or the prospectus contained therein (the “Prospectus”), or that the SEC otherwise has (i) suspended or withdrawn the effectiveness of the Base Registration Statement or (ii) issued any order preventing or suspending the use of the Prospectus or any prospectus supplement thereto, in either case, either temporarily or permanently or intends or has threatened in writing to do so. The “Plan of Distribution” section of the Prospectus permits the issuance of the Securities hereunder. The SEC has not notified the Company of any objection to the use of the form of the Base Registration Statement pursuant to Rule 401(g)(1) of the Securities Act. The Company was, at the time of the filing of the Base Registration Statement, eligible to use Form S-3. As of the Execution Date, the Company is currently eligible to use Form S-3 under the Securities Act and it meets the transaction requirements with respect to 153,601 shares of Common Stock, as set forth in General Instruction I.B.6 of Form S-3. All corporate action required to be taken for the authorization, issuance and sale of the Securities has been duly and validly taken. The Securities conform in all material respects to all statements with respect thereto contained in the Base Registration Statement, the Prospectus, and the Prospectus Supplement (as defined below).

## **ARTICLE V COVENANTS OF INVESTOR**

Section 5.1 SHORT SALES AND CONFIDENTIALITY. During the period from the Execution Date to the end of the Commitment Period, neither the Investor, nor any Affiliate of the Investor acting on its behalf or pursuant to any understanding with it, will execute (i) any “short sale” (as such term is defined in Section 242.200 of Regulation SHO of the Exchange Act) of the Common Stock or (ii) hedging transaction which establishes a net short position with respect to the Common Stock or any other Company’s securities. For the purposes hereof, and in accordance with Regulation SHO, the sale after delivery of the Purchase Notice of such number of shares of Common Stock reasonably expected to be purchased under the Purchase Notice shall not be deemed a short sale. The Investor shall, until such time as the transactions contemplated by the Transaction Documents are publicly disclosed by the Company in accordance with the terms of the Transaction Documents, maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents.

Section 5.2 COMPLIANCE WITH LAW; TRADING IN SECURITIES. The Investor’s trading activities with respect to shares of Common Stock will be in compliance with all applicable state and federal securities laws and regulations and the rules and regulations of the Principal Market.

## **ARTICLE VI COVENANTS OF THE COMPANY**

Section 6.1 LISTING OF COMMON STOCK. The Company shall use its commercially reasonable efforts to continue the listing or quotation and trading of the Common Stock on the Principal Market (including, without limitation, maintaining sufficient net tangible assets, if required) and will comply in all respects with the Company’s reporting, filing and other obligations under the bylaws or rules of the Principal Market.

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Section 6.2 **FILING OF CURRENT REPORT.** The Company agrees that it shall file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the SEC within the time required by the Exchange Act, relating to the execution of the transactions contemplated by, and describing the material terms and conditions of, the Transaction Documents (the “**Current Report**”). The Company shall permit the Investor to review and comment upon the final pre-filing draft version of the Current Report at least two (2) Business Days prior to its filing with the SEC, and the Company shall give reasonable consideration to all such comments. The Investor shall use its reasonable best efforts to comment upon the final pre-filing draft version of the Current Report within one (1) Business Day from the date the Investor receives it from the Company.

Section 6.3 **FILING OF REGISTRATION STATEMENT.** The Company shall file with the SEC, within two (2) Business Days from the Execution Date, a prospectus supplement covering the offering and sale of the Securities (the “**Prospectus Supplement**”). The Prospectus Supplement shall relate to the transactions contemplated by, and describing the material terms and conditions of, this Agreement, containing required information previously omitted from the Prospectus at the time of effectiveness of the Base Registration Statement in reliance on Rule 430B under the Securities Act, and disclosing all information relating to the transactions contemplated hereby required to be disclosed in the Base Registration Statement and the Prospectus as of the date of the Prospectus Supplement, including, without limitation, information required to be disclosed in the section captioned “**Plan of Distribution**” in the Prospectus. The Company shall permit the Investor to review and comment upon the Prospectus Supplement within a reasonable time prior to their filing with the SEC, the Company shall give reasonable consideration to all such comments, and the Company shall not file the Current Report or the Prospectus Supplement with the SEC in a form to which the Investor reasonably objects. The Investor shall furnish to the Company such information regarding itself, the Company’s securities beneficially owned by the Investor, and the intended method of distribution thereof, including any arrangement between the Investor and any other person or relating to the sale or distribution of the Company’s securities, as shall be reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement, and shall otherwise cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement with the SEC. At the time of the filing of the Prospectus Supplement, the Company shall have no knowledge of any untrue statement (or alleged untrue statement) of a material fact in the Prospectus (as supplemented by the Prospectus Supplement) or omission (or alleged omission) of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and there shall be no such untrue statement of material fact or omission in any effective registration statement filed or any post-effective amendment or prospectus which is a part of the foregoing. The Company shall promptly give the Investor notice of any event (including the passage of time) which makes the Prospectus not to be in compliance with Section 5(b) or 10 of the Securities Act and shall use its best efforts thereafter to file with the SEC any Post-Effective Amendment to the Base Registration Statement, amended prospectus or prospectus supplement in order to comply with Section 5(b) or 10 of the Securities Act.

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Section 6.4 ISSUANCE OF COMMITMENT SHARES. In consideration for the Investor's execution and delivery of, and performance under, this Agreement, the Company shall cause the Transfer Agent to issue Commitment Shares as follows:

(a) Within two (2) Business Days of the filing of the Prospectus Supplement with the SEC, the Company shall cause the Transfer Agent to issue a number of Commitment Shares (the "Initial Commitment Shares") equal to two percent (2%) of the initial Investment Amount Commitment Shares divided by the closing price of the Common Stock for the Business Day immediately prior to the date the Initial Commitment Shares are issued. The issuance of the Initial Commitment Shares shall be delivered either (i) as DWAC Shares to the Investor, (ii) to Investor's account with the Company's Transfer Agent through the Direct Registration System ("DRS"), or (iii) a book-entry statement evidencing that the Purchase Notice Shares have been issued to the Investor in book-entry form.

(b) If the Company elects to increase the Investment Amount pursuant to Section 2.1(c), then, within five (5) Business Days of the Company's written notice of the election, the Company shall cause the Transfer Agent to issue a number of Commitment Shares (in each case, "Additional Commitment Shares") equal to two percent (2%) of the Additional Investment Amount divided by the closing price of the Common Stock for the Business Day immediately prior to the date such Additional Commitment Shares are issued. The issuance of such Additional Commitment Shares shall be delivered either (i) as DWAC Shares to the Investor, (ii) to Investor's account with the Company's Transfer Agent through the Direct Registration System ("DRS"), or (iii) a book-entry statement evidencing that the Purchase Notice Shares have been issued to the Investor in book-entry form.

**ARTICLE VII**  
**CONDITIONS TO DELIVERY OF**  
**PURCHASE NOTICE AND CONDITIONS TO CLOSING**

Section 7.1 CONDITIONS PRECEDENT TO THE OBLIGATION OF THE COMPANY TO ISSUE AND SELL PURCHASE NOTICE SHARES. The obligation of the Company to issue and sell the Purchase Notice Shares to the Investor is subject to the satisfaction of each of the conditions set forth below:

(a) ACCURACY OF INVESTOR'S REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Investor shall be true and correct in all material respects as of the Execution Date and as of the date of each Closing as though made at each such time.

(b) PERFORMANCE BY INVESTOR. Investor shall have performed, satisfied and complied in all respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Investor at or prior to each Closing.

(c) PRINCIPAL MARKET REGULATION. The Company shall have no obligation to issue any Purchase Notice Shares, and the Investor shall have no right to receive any Purchase Notice Shares, if the issuance of such Purchase Notice Shares would exceed the aggregate number of shares of Common Stock which the Company may issue without breaching the Company's obligations under the rules or regulations of the Principal Market.

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Section 7.2 CONDITIONS PRECEDENT TO THE OBLIGATION OF INVESTOR TO PURCHASE THE PURCHASE NOTICE SHARES. The obligation of the Investor hereunder to purchase the Purchase Notice Shares is subject to the satisfaction of each of the following conditions:

(a) EFFECTIVE REGISTRATION STATEMENT. The Base Registration Statement, and any amendment or supplement thereto, shall remain effective for the offering and sale of the Securities and (i) the Company shall not have received notice that the SEC has issued or intends to issue a stop order with respect to such Base Registration Statement or that the SEC otherwise has suspended or withdrawn the effectiveness of such Base Registration Statement, either temporarily or permanently, or intends or has threatened to do so and (ii) no other suspension of the use of, or withdrawal of the effectiveness of, such Base Registration Statement, the Prospectus or the Prospectus Supplement shall exist. The Investor shall not have received any notice from the Company that the Prospectus, Prospectus Supplement and/or any prospectus supplement or amendment thereto fails to meet the requirements of Section 5(b) or Section 10 of the Securities Act.

(b) ACCURACY OF THE COMPANY'S REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Company shall be true and correct in all material respects as of the date of this Agreement and as of the date of each Closing (except for representations and warranties specifically made as of a particular date).

(c) PERFORMANCE BY THE COMPANY. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company.

(d) NO INJUNCTION. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or adopted by any court or governmental authority of competent jurisdiction that prohibits or directly and materially adversely affects any of the transactions contemplated by the Transaction Documents, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by the Transaction Documents.

(e) NO SUSPENSION OF TRADING IN OR DELISTING OF COMMON STOCK. The trading of the Common Stock shall not have been suspended by the SEC or the Principal Market, or otherwise halted for any reason, and the Common Stock shall have been approved for listing or quotation on and shall not have been delisted from or no longer quoted on the Principal Market. In the event of a suspension, delisting, or halting for any reason, of the trading of the Common Stock, as contemplated by this Section 7.2(g), the Investor shall have the right to return to the Company any amount of Purchase Notice Shares associated with such Purchase Notice, and the Investment Amount with respect to such Purchase Notice shall be refunded accordingly.

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(f) BENEFICIAL OWNERSHIP LIMITATION. The number of Purchase Notice Shares then to be purchased by the Investor shall not exceed the number of such shares that, when aggregated with all other shares of Common Stock then owned by the Investor beneficially or deemed beneficially owned by the Investor, would result in the Investor owning more than the Beneficial Ownership Limitation (as defined below), as determined in accordance with Section 13 of the Exchange Act. For purposes of this Section 7.2(f), if the amount of Common Stock outstanding is greater or lesser on a Closing Date than on the date upon which the Purchase Notice associated with such Closing Date is given, the amount of Common Stock outstanding on such issuance of a Purchase Notice shall govern for purposes of determining whether the Investor, when aggregating all purchases of Common Stock made pursuant to this Agreement, would own more than the Beneficial Ownership Limitation following a purchase on any such Closing Date. If the Investor claims that compliance with a Purchase Notice would result in the Investor owning more than the Beneficial Ownership Limitation, upon request of the Company the Investor will provide the Company with evidence of the Investor's then existing shares beneficially or deemed beneficially owned. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately prior to the issuance of shares of Common Stock issuable pursuant to a Purchase Notice. To the extent that the Beneficial Ownership Limitation would be exceeded in connection with a Closing, the number of shares of Common Stock issuable to the Investor shall be reduced so it does not exceed the Beneficial Ownership Limitation.

(g) PRINCIPAL MARKET REGULATION. The Company shall have no right to issue and the Investor shall have no obligation to purchase any Purchase Notice Shares if the issuance of aggregate Purchase Notice Shares would exceed 373,284 shares of Common Stock (the "Exchange Cap") (which equals 19.99% of the Company's outstanding shares of Common Stock and the Company's Class B Common Stock, combined, as of the date hereof), unless stockholder approval is obtained to issue more than 373,284 shares of Common Stock pursuant to this Agreement. The Exchange Cap shall be appropriately adjusted for any stock dividend, stock split, reverse stock split, or similar transaction.

(h) NO KNOWLEDGE. The Company shall have no knowledge of any event more likely than not to have the effect of causing the effectiveness of the Base Registration Statement to be suspended or the Prospectus or any prospectus supplement thereto failing to meet the requirement of Sections 5(b) or 10 of the Securities Act (which event is more likely than not to occur within the fifteen (15) Business Days following the Business Day on which such Purchase Notice is deemed delivered).

(i) NO VIOLATION OF SHAREHOLDER APPROVAL REQUIREMENT. The issuance of the Securities shall not violate the shareholder approval requirements of the Principal Market.

(j) DWAC ELIGIBLE. The Common Stock must be DWAC Eligible and not subject to a "DTC chill".

(k) SEC DOCUMENTS. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the SEC pursuant to the reporting requirements of the Exchange Act (other than a report that is required solely pursuant to Item 1.01, 1.02, 1.04, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8-K) shall have been filed with the SEC within the applicable time periods prescribed for such filings under the Exchange Act. To the best knowledge of the Company, as of their respective dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and other federal laws, rules and regulations applicable to such SEC Documents, and none of the SEC Documents contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

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**ARTICLE VIII  
LEGENDS**

Section 8.1 NO RESTRICTIVE STOCK LEGEND. No restrictive stock legend shall be placed on the share certificates representing the Purchase Notice Shares.

Section 8.2 INVESTOR'S COMPLIANCE. Nothing in this Article VIII shall affect in any way the Investor's obligations hereunder to comply with all applicable securities laws upon the sale of the Common Stock.

**ARTICLE IX  
INDEMNIFICATION**

Section 9.1 Each party (an "Indemnifying Party") agrees to indemnify and hold harmless the other party along with its officers, directors, employees, and authorized agents (an "Indemnified Party") from and against any claim or suite by third parties for Damages resulting from or arising out of (i) any misrepresentation, breach of warranty or nonfulfillment of or failure to perform any covenant or agreement on the part of the Indemnifying Party contained in this Agreement, (ii) any untrue statement or alleged untrue statement of a material fact contained in the Base Registration Statement or any post-effective amendment thereof or Prospectus or Prospectus Supplement, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, or (iv) any violation by the Indemnifying Party of the Securities Act, the Exchange Act, any state securities law or any rule or regulation under the Securities Act, the Exchange Act or any state securities law, as such Damages are incurred by the Indemnified Party except to the extent that such Damages result primarily from the Indemnified Party's failure to perform any covenant or agreement contained in this Agreement or the Indemnified Party's negligent, recklessness or willful misconduct; provided, however, that the foregoing indemnity agreement shall not apply to any Damages of the Investor to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made by the Company in reliance upon and in conformity with information furnished to the Company by the Investor for use in the Base Registration Statement, any post-effective amendment thereof, Prospectus, Prospectus Supplement thereto, or any preliminary prospectus or final prospectus (as amended or supplemented).

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**ARTICLE X**  
**MISCELLANEOUS**

Section 10.1 FORCE MAJEURE. NO PARTY shall be liable for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including but not limited to acts of God, epidemic or pandemic, natural disaster, labor disturbances, terrorist attack, riots or wars, and any action taken, or restrictions or limitations imposed, by government or public authorities.

Section 10.2 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law.

Section 10.3 ASSIGNMENT. The Transaction Documents shall be binding upon and inure to the benefit of the Company and the Investor and their respective successors. Neither any of the Transaction Documents nor any rights of the Investor or the Company hereunder may be assigned by either Party to any other Person.

Section 10.4 NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the benefit of the Company and the Investor and their respective successors, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as contemplated by Article XI.

Section 10.5 TERMINATION. This Agreement shall automatically terminate on the earlier of (i) the end of the Commitment Period; or (ii) the date that, pursuant to or within the meaning of any Bankruptcy Law, the Company commences a voluntary case or any Person commences a proceeding against the Company, a Custodian is appointed for the Company or for all or substantially all of its property or the Company makes a general assignment for the benefit of its creditors.

Section 10.6 ENTIRE AGREEMENT. The Transaction Documents, together with the exhibits thereto, contain the entire understanding of the Company and the Investor with respect to the matters covered herein and therein and supersede all prior agreements and understandings, oral or written, with respect to such matters.

Section 10.7 FEES AND EXPENSES. Except as expressly set forth in the Transaction Documents or any other writing to the contrary, each Party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such Party incidental to the negotiation, preparation, execution, delivery and performance of the Transaction Documents. The Company shall pay the Clearing Cost associated with each Closing, and any Transfer Agent fees (including any fees required for same-day processing of any instruction letter delivered by the Company), stamp taxes and other taxes and duties levied on the Company in connection with the delivery of any Securities to the Investor.

Section 10.8 COUNTERPARTS AND EXECUTION. The Transaction Documents may be executed in multiple counterparts, each of which may be executed by less than all of the Parties and shall be deemed to be an original instrument which shall be enforceable against the Parties actually executing such counterparts and all of which together shall constitute one and the same instrument. The Transaction Documents may be delivered to the other Party hereto by email of a copy of the Transaction Documents bearing the signature of the Party so delivering the Transaction Documents. The Parties agree that this Agreement shall be considered signed when the signature of a Party is delivered by .PDF, DocuSign or other generally accepted electronic signature. Such .PDF, DocuSign, or other generally accepted electronic signature shall be treated in all respects as having the same effect as an original signature. The signatories to this Agreement each represent and warrant that they are duly authorized by the Parties with the power and authority to bind the Parties to the terms and conditions thereof.

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Section 10.9 SEVERABILITY. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that such severability shall be ineffective if it materially changes the economic benefit of this Agreement to any Party.

Section 10.10 FURTHER ASSURANCES. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 10.11 NOT TO BE CONSTRUED AGAINST DRAFTER. The Parties acknowledge that they have had an adequate opportunity to review each, and every provision contained in this Agreement and to submit the same to legal counsel for review and comment. The Parties agree with each, and every provision contained in this Agreement and agree that the rule of construction that a contract be construed against the drafter, if any, shall not be applied in the interpretation and construction of this Agreement.

Section 10.12 TITLE AND SUBTITLES. The titles and subtitles used in this Agreement are used for the convenience of reference and are not to be considered in construing or interpreting this Agreement.

Section 10.13 AMENDMENTS; WAIVERS. No provision of this Agreement may be amended other than by a written instrument signed by both Parties hereto and no provision of this Agreement may be waived other than in a written instrument signed by the Party against whom enforcement of such waiver is sought. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

Section 10.14 PUBLICITY. The Company and the Investor shall consult with each other in issuing any press releases or otherwise making public statements with respect to the transactions contemplated hereby and no Party shall issue any such press release or otherwise make any such public statement, other than as required by law or for legal compliance, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that no prior consent shall be required if such disclosure is required by law, in which such case the disclosing Party shall provide the other Party with prior notice of such public statement. The Investor acknowledges that the Transaction Documents may be deemed to be "material contracts," as that term is defined by Item 601(b)(10) of Regulation S-K, and that the Company may therefore be required to file such documents as exhibits to reports or registration statements filed under the Securities Act or the Exchange Act. The Investor further agrees that the status of such documents and materials as material contracts shall be determined solely by the Company, in consultation with its counsel.

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Section 10.15 DISPUTE RESOLUTION.

(a) AVERAGE DAILY TRADING VOLUME, PURCHASE NOTICE LIMIT, OR VWAP.

(i) In the case of a dispute relating to the Average Daily Trading Volume, Purchase Notice Limitation or VWAP (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Investor (as the case may be) shall submit the dispute to the other Party via facsimile or electronic mail within five (5) Business Days after the Party learned of the circumstances giving rise to such dispute. If the Investor and the Company are unable to promptly resolve such dispute relating to such Average Daily Trading Volume, Purchase Notice Limit, or VWAP (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or the Investor (as the case may be) of such dispute to the Company or the Investor (as the case may be), then the Company and the Investor may select an independent, reputable investment bank as mutually agreed upon to resolve such dispute. In the event that the Parties cannot agree upon such an investment bank within ten (10) Business Days of the date of the initial notice, the Parties shall submit the dispute to arbitration pursuant to Section 10.15(b).

(ii) The Investor and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the above and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such investment bank was selected (the "Dispute Submission Deadline") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "Required Dispute Documentation") (it being understood and agreed that if either the Investor or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the Party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Investor or otherwise requested by such investment bank, neither the Company nor the Investor shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Investor shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Investor of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne by the losing Party, and such investment bank's resolution of such dispute shall be final and binding upon all Parties. The terms of this Agreement and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Agreement and any other applicable Transaction Documents.

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(iv) Both the Company and the Investor expressly acknowledge and agree that (i) this Section 10.15(a) constitutes an agreement to arbitrate between the Company and the Investor (and constitutes an arbitration agreement) under § 5701, et seq. of the Delaware Code Title 10 with respect to the dispute described in Section 10.15(a)(i) and that both the Company and the Investor are authorized to apply for an order to compel arbitration pursuant to Delaware Code Title 10 § 5703 in order to compel compliance with this Section 10.15(a).

(b) **JURISDICTION.** Subject to Section 10.15(a), each party hereby irrevocably submits that any dispute, controversy or claim arising out of or relating to this Agreement or any Transaction Document (including whether any such dispute is arbitrable), shall be submitted to the exclusive jurisdiction of the Chancery Court of the State of Delaware and the United States District Court for the District of Delaware. Each party hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.** The Company and the Investor agree that all dispute resolution proceedings in accordance with this Section 10.15 may be conducted in a virtual setting.

Section 10.16 **NOTICES.** All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (a) personally served, (b) delivered by reputable air courier service with charges prepaid for next Business Day delivery, or (c) transmitted by hand delivery, or email as a PDF (with, solely for the hand delivery method, a written confirmation of delivery or receipt), addressed as set forth below or to such other address as such Party shall have specified most recently by written notice given in accordance herewith. Any notice or other communication required or permitted to be given hereunder shall be deemed effective upon hand delivery or delivery by email at the address designated below (if delivered on a Business Day during normal business hours where such notice is to be received), or the first Business Day following such delivery (if delivered other than on a Business Day during normal business hours where such notice is to be received).

The addresses for such communications shall be:

If to the Company:  
Address: 5792 NE 4th Avenue, Miami, FL 33137  
Telephone: (305) 507-8799  
E-mail: dk@motorsportgames.com

If to the Investor:  
Address: 405 Lexington Ave., 9<sup>th</sup> Floor, New York, NY 10174  
Telephone: (917) 793-1173  
E-mail: operations@alumnicapital.com

Either Party hereto may from time to time change its address or email for notices under this clause by giving prior written notice of such changed address to the other party hereto.

*[Signature Page Follows]*

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the Execution Date.

MOTORSPORT GAMES INC.

By: /s/ Dmitry Kozko

Name: Dmitry Kozko

Title: Chief Executive Officer

Date: December 9, 2022

ALUMNI CAPITAL GP LLC

By: Alumni Capital GP LLC

Its: General Partner

By: /s/ Ashkan Mapar

Name: Ashkan Mapar

Title: Manager

Date: December 9, 2022

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**EXHIBIT A  
FORM OF PURCHASE NOTICE**

TO: ALUMNI CAPITAL GP LLC

We refer to the Purchase Agreement, dated as of December 9, 2022 (the "Agreement"), entered into by and between MOTORSPORT GAMES INC., and you. Capitalized terms defined in the Agreement shall, unless otherwise defined herein, have the same meaning when used herein.

We hereby certify that, as of the date hereof, the conditions set forth in Section 7 of the Agreement are satisfied and we hereby elect to exercise our right pursuant to the Agreement to require you to purchase \_\_\_\_\_ Purchased Shares for an Investment Amount not to exceed [Two Million Dollars (\$2,000,000)].

Purchase Price I

Purchase Price Per Share: \$ \_\_\_\_\_

Purchase Price II

Purchase Price Per Share: To be determined in accordance with Section 2.1 of the Agreement.

The Company's wire instructions are as follows:

*[Insert Wire Instructions]*

MOTORSPORT GAMES INC.

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

Name: Dmitry Kozko

Title: Chief Executive Officer

Date: [\_\_\_\_\_] \_\_, 2022

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**Motorsport Games Enters into Equity Purchase Agreement**

**MIAMI, December 9, 2022** — Motorsport Games Inc. (NASDAQ: MSGM) (“Motorsport Games” or the “Company”) today announced that the Company has entered into a purchase agreement (the “Agreement”) with an investor for up to \$2 million, which amount may increase at the Company’s option to \$10 million.

Under the terms and conditions of the Agreement, the Company has the right, but not the obligation, to sell to the investor up to \$2 million of its shares of common stock, which amount may increase at the Company’s option to up to \$10 million in shares, until December 31, 2023, subject to certain limitations. Any shares of common stock that is sold to the investor will occur at a purchase price that is determined in part by prevailing market prices at the time of each sale. The investor has agreed not to cause or engage in any short selling or hedging of the Company’s common stock. The Company issued common shares to the investor as consideration for the investor’s commitment to purchase the Company’s common stock under the Agreement.

“We are pleased to enter into the purchase agreement and expect to use the proceeds, as available, for product development and other business purposes. This transaction provides us with additional financial flexibility as we continue to execute on our business plan,” said Dmitry Kozko, CEO and Executive Chairman of Motorsport Games.

The foregoing summary of the Agreement is incomplete, and further details relating to the Agreement, including additional terms and conditions, and this transaction will be contained in the Current Report on Form 8-K the Company intends to file with the Securities and Exchange Commission later today.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor will there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such jurisdiction.

The offering of the securities described in this press release is being made pursuant to the Company’s effective shelf registration statement on Form S-3 (File No. 333-262462) (the “Registration Statement”), and the related base prospectus included in the Registration Statement, as supplemented by a prospectus supplement to be filed with the SEC on or about December 9, 2022. Copies of the prospectus supplement and accompanying prospectus may be obtained when filed with the SEC at the SEC’s website at [www.sec.gov](http://www.sec.gov).

**About Motorsport Games:**

Motorsport Games, a Motorsport Network company, is a leading racing game developer, publisher and esports ecosystem provider of official motorsport racing series throughout the world. Combining innovative and engaging video games with exciting esports competitions and content for racing fans and gamers, Motorsport Games strives to make the joy of racing accessible to everyone. The Company is the officially licensed video game developer and publisher for iconic motorsport racing series across PC, PlayStation, Xbox, Nintendo Switch and mobile, including NASCAR, INDYCAR, 24 Hours of Le Mans and the British Touring Car Championship (“BTCC”), as well as the industry leading rFactor 2 and KartKraft simulations. rFactor 2 also serves as the official sim racing platform of Formula E, while also powering F1 Arcade through a partnership with Kindred Concepts. Motorsport Games is an award-winning esports partner of choice for 24 Hours of Le Mans, Formula E, BTCC, the FIA World Rallycross Championship and the eNASCAR Heat Pro League, among others. Motorsport Games is building a virtual racing ecosystem where each product drives excitement, every esports event is an adventure and every story inspires.

## **FORWARD-LOOKING STATEMENTS**

Certain statements in this press release which are not historical facts are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and are provided pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Any statements in this press release that are not statements of historical fact may be deemed forward-looking statements. Words such as “continue,” “will,” “may,” “could,” “should,” “expect,” “expected,” “plans,” “intend,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” and similar expressions are intended to identify such forward-looking statements. All forward-looking statements involve significant risks and uncertainties that could cause actual results to differ materially from those expressed or implied in the forward-looking statements, many of which are generally outside the control of Motorsport Games and are difficult to predict. Examples of such risks and uncertainties include, without limitation, sales of shares under the Agreement impacting the price of the Company’s Class A common stock, inability to raise funds under the Agreement due to certain limitations under the Agreement, and less than expected results from the proceeds raised from any transaction under the Agreement. Additional factors that could cause actual results to differ materially from those expressed or implied in the forward-looking statements can be found in Motorsport Games’ filings with the SEC, including its Annual Report on Form 10-K for the fiscal year ended December 31, 2021, its Quarterly Reports on Form 10-Q filed with the SEC during 2022, as well as in its subsequent filings with the SEC. Motorsport Games anticipates that subsequent events and developments may cause its plans, intentions and expectations to change. Motorsport Games assumes no obligation, and it specifically disclaims any intention or obligation, to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as expressly required by law. Forward-looking statements speak only as of the date they are made and should not be relied upon as representing Motorsport Games’ plans and expectations as of any subsequent date.

### **Website and Social Media Disclosure:**

Investors and others should note that we announce material financial information to our investors using our investor relations website ([ir.motorsportgames.com](http://ir.motorsportgames.com)), SEC filings, press releases, public conference calls and webcasts. We use these channels, as well as social media and blogs, to communicate with our investors and the public about our company and our products. It is possible that the information we post on our websites, social media and blogs could be deemed to be material information. Therefore, we encourage investors, the media and others interested in our company to review the information we post on the websites, social media channels and blogs, including the following (which list we will update from time to time on our investor relations website):

#### **Websites**

[motorsportgames.com](http://motorsportgames.com)  
[traxion.gg](http://traxion.gg)  
[motorsport.com](http://motorsport.com)

#### **Social Media**

Twitter: [@msportgames](https://twitter.com/msportgames) & [@traxiongg](https://twitter.com/traxiongg)  
Instagram: [msportgames](https://www.instagram.com/msportgames) & [traxiongg](https://www.instagram.com/traxiongg)  
Facebook: [Motorsport Games](https://www.facebook.com/MotorsportGames) & [traxiongg](https://www.facebook.com/traxiongg)  
LinkedIn: [Motorsport Games](https://www.linkedin.com/company/MotorsportGames)  
Twitch: [traxiongg](https://www.twitch.tv/traxiongg)  
Reddit: [traxiongg](https://www.reddit.com/user/traxiongg)

The contents of these websites and social media channels are not part of, nor will they be incorporated by reference into, this press release.