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 12, 2024**

AGRIFY CORPORATION
(Exact name of registrant as specified in its charter)

Nevada	**001-39946**	**30-0943453**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

2468 Industrial Row Dr. Troy, MI	**48084**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

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:

Title of each class	**Trading symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	AGFY	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.

During November 2024, Agrify Corporation (the "Company") entered into a non-binding letter of intent (the "LOI") with Double or Nothing LLC ("Double or Nothing") regarding a proposed acquisition by the Company of substantially all of the assets of Double or Nothing in connection with its Señorita brand of beverages containing cannabinoids.

On December 12, 2024, pursuant to the terms of the LOI, the Company entered into an Asset Purchase Agreement (the "Purchase Agreement") with Joel Gott and Charles Bieler (the "Owners") and Double or Nothing. Under the Purchase Agreement, the Company acquired the Señorita brand of beverages and related assets from Double or Nothing relating to the portions of its business operating in compliance with Canadian law and under the 2018 Farm Bill and applicable state laws (the "Acquired Business").

The aggregate consideration issued to Double or Nothing for the acquisition of the Acquired Business consisted of 97,300 shares (the "Shares") of the Company's common stock, par value $0.001 per share ("Common Stock") and pre-funded warrants (the "Pre-Funded Warrants") to acquire up to 432,700 shares of Common Stock (the "Warrant Shares"). Subject to certain exceptions, the Purchase Agreement restricts the ability of Double or Nothing to sell, assign, or otherwise transfer one-half of the aggregate number of Shares and Warrant Shares for a period of six months and the remainder of the Shares and Warrant Shares for a period of two years.

Each Pre-Funded Warrant is exercisable upon issuance into one share of Common Stock at an exercise price per share of $0.001 (as adjusted from time to time in accordance with the terms thereof) and will expire when such Pre-Funded Warrant is fully exercised. The Pre-Funded Warrants may not be exercised to the extent that the holder, together with its affiliates, would beneficially own more than 4.99% of the number of shares of common stock outstanding immediately after giving effect to such exercise. A holder of a Pre-Funded Warrant may increase or decrease this percentage, but not in excess of 9.99%, or, if the Pre-Funded Warrant has been assigned to an affiliate of the Company, in excess of 49.99%, by providing at least 61 days' prior notice to the Company. Additionally, the Pre-Funded Warrants may not be exercised to the extent that the aggregate number of shares of Common Stock issued as Warrant Shares and as Shares under the Purchase Agreement and the Pre-Funded Warrants would collectively exceed 370,670, which equals approximately 19.99% of the number of shares of Common Stock outstanding immediately prior to the signing of the Purchase Agreement (the "Exchange Cap"). Pursuant to the Purchase Agreement, the Company agreed to use its reasonable best efforts to obtain stockholder approval for removal of the Exchange Cap from the Pre-Funded Warrants at the Company's next annual meeting of stockholders.

The Purchase Agreement includes customary representations and warranties and covenants of the parties. Subject to certain customary limitations, (i) Double or Nothing and the Owners will indemnify the Company and its affiliates, officers, directors and other agents against certain losses related to, among other things, breaches of the Owners' and Double or Nothing's representations, warranties or covenants, any liabilities other than those expressly assumed by the Company under the Purchase Agreement, bulk sales liabilities, and any related claims, and (ii) the Company will indemnify Double or Nothing and its affiliates, officers, directors and other agents against certain losses related to, breaches of the Company's representations, warranties or covenants, and any related claims.

The Purchase Agreement has been included as an exhibit hereto to provide investors with information regarding its terms and is not intended to provide any financial or other factual information about the Company, the Acquired Business or Double or Nothing. In particular, the representations, warranties and covenants contained in the Purchase Agreement (i) were made only for purposes of that agreement and as of specific dates, (ii) were made solely for the benefit of the parties to the Purchase Agreement, (iii) may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties to the Purchase Agreement rather than establishing those matters as facts, and (iv) may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

The foregoing summary of the Purchase Agreement, the Pre-Funded Warrants and related transactions does not purport to be complete and is qualified in its entirety by reference to the complete text of the Purchase Agreement and the Pre-Funded Warrants, which are filed as Exhibit 2.1 and Exhibit 4.1 hereto, respectively, and which are incorporated by reference herein.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth in Item 1.01 above concerning the acquisition of the Acquired Business is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference into this Item 3.02 in its entirety. The Shares, the Pre-Funded Warrants and the Warrant Shares were and will be sold and issued without registration under the Securities Act of 1933 (the "Securities Act") in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 506 promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

Item 7.01 Regulation FD Disclosure.

On December 16, 2024, the Company issued a press release announcing the acquisition of the Acquired Business. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information furnished herein, including Exhibit 99.1, is not deemed to be "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section. This information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates them by reference.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

Any financial statements required by Item 9.01(a) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

(b) Pro Forma Financial Information.

Any pro forma financial information required by Item 9.01(b) will be filed by amendment as soon as practicable, but no later than 71 calendar days after the date on which this initial Current Report on Form 8-K was required to be filed.

(d) Exhibits.

The Company hereby files or furnishes, as applicable, the following exhibits:

Exhibit No.	Description
2.1*†	Asset Purchase Agreement, dated as of December 12, 2024, among the registrant, Double or North LLC, Joel Gott, and Charles Bieler.
4.1	Pre-Funded Warrant dated December 12, 2024.
99.1**	Press Release of the registrant dated December 16, 2024.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish copies of any of the omitted schedules and exhibits upon request by the U.S. Securities and Exchange Commission.

** Furnished but not filed.

† Certain confidential portions of this exhibit were omitted pursuant to Item 601(b)(2)(ii) of Regulation S-K because the identified confidential portions (i) are not material and (ii) are customarily and actually treated as private or confidential by the Company.

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.

AGRIFY CORPORATION

Date: December 16, 2024

By: /s/ Benjamin Kovler
Benjamin Kovler
Chairman and Interim Chief Executive Officer

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL TO THE REGISTRANT AND (II) THE REGISTRANT CUSTOMARILY AND ACTUALLY TREATS SUCH INFORMATION AS PRIVATE OR CONFIDENTIAL. REDACTED PORTIONS OF THIS EXHIBIT ARE MARKED BY [***].

ASSET PURCHASE AGREEMENT

By and Among

DOUBLE OR NOTHING LLC

JOEL GOTT

CHARLES BIELER

and

AGRIFY CORPORATION

Dated December 12, 2024

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated December 12, 2024, is made by and among DOUBLE OR NOTHING LLC, a California limited liability company ("**Seller**"), JOEL GOTT, and CHARLES BIELER, an individual (the "**Owners**"), and AGRIFY CORPORATION, a Nevada corporation ("**Purchaser**"). (Seller, the Owners, and Purchaser are sometimes referred to individually as a "**Party**" and together, as the "**Parties**.")

RECITALS

A. Seller is engaged in the business of manufacturing (through third parties), marketing, and distributing (through third parties) beverages containing cannabinoids, including the licensing of brands in connection therewith (the "**Business**").

B. The Owners own 100% of Seller's membership interests and thus stand to materially benefit from the transactions contemplated hereby.

C. Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase from Seller, substantially all of Seller's assets, including all of the assets related to the Business, on the terms and subject to the conditions contained in this Agreement (the "**Transaction**"), and to provide for Purchaser's continuation of the Business, by entering into certain other agreements as set forth herein. The Parties acknowledge that Seller shall retain all Liabilities of the Business (and any other Liabilities of Seller) except for the Assumed Liabilities.

D. The Parties intend that Purchaser shall only acquire assets hereunder whose use in the Business is compliant with Canadian law or the definition of legal hemp under the 2018 Farm Bill and applicable State Laws.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows.

Article I.
PURCHASE AND SALE OF ASSETS.

Section 1.1 Purchased Assets. At the Closing, Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Seller, free and clear of all liens, claims, options, charges, security interests, pledges, mortgages or other encumbrances (collectively, "**Liens**"), other than Permitted Liens, all of Seller's assets and properties of every kind and nature, real and personal, tangible and intangible, wherever situated, including all such assets and properties that are used in, or relate to, the Business, except for the Excluded Assets (all of the assets, properties, rights and interests being acquired hereby are collectively called the "**Purchased Assets**").

The Purchased Assets include, without limitation, the following items used in connection with the Business, including all proceeds therefrom:

(a) Reserved.

(b) Records. All books and records, documents, customer files, customer lists, vendor lists and records, cost files and records, credit information, distribution records, business records, correspondence and sales and promotional literature and materials (collectively, the "**Books and Records**");

(c) Intellectual Property. All (i) Patents, (ii) Trademarks, (iii) Trade Names, (iv) know-how specific to the Products (as hereinafter defined), (v) copyrights, inventions, trade secrets, service marks and all other intellectual property rights, and (vi), in each case, all goodwill associated therewith or related thereto, and together with all causes of action (in law or equity), claims, demands and any other rights for, or arising from any past, present or future infringement thereof (collectively, the "**Intellectual Property**");

(d) Reserved.

(e) Reserved.

(f) Contracts. All rights and benefits under and all contracts, of whatever nature or description, that relate to the Business, including those listed on Schedule 1.1(f) (collectively, the "**Contracts**");

(g) Reserved.

(h) Deposits and Claims. All advance payments, deposits and claims for refund (other than refunds pertaining to Liabilities that are not Assumed Liabilities), credit and the like that relate to the Business;

(i) Inventory. All inventory, including raw materials, work-in-process, finished goods, packaging and supplies held for use in the conduct of the Business, whether or not carried or reflected on the books of Seller (collectively, the "**Inventory**"); and

(j) Goodwill. All goodwill associated with the Business.

"**Person**" means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company or other legal entity or organization.

Section 1.2 Limitations on Assignability. Seller shall use commercially reasonable efforts to obtain all consents or approvals necessary for the assignment and assumption of any of the Purchased Assets. Nothing contained in this Agreement shall require Purchaser to enter into, or to accept as a substitute for performance by Seller hereunder, any arrangement that would impose any additional Liability on Purchaser, or that would deprive Purchaser of any benefits contemplated by this Agreement, and nothing herein shall require Purchaser to close the Transaction in the event Seller's failure to deliver any of the Purchased Assets would constitute a failure to satisfy any of the conditions contained in Section 10.1. In the event that any consent or approval with respect to the foregoing is not obtained and Purchaser waives its right to receive such consent or approval at Closing, then the Parties shall cooperate in a commercially reasonable manner to provide Purchaser with all of the benefits enjoyed by Seller under the Purchased Assets (including any Contracts) for which such consent or approval has not been given and Seller shall continue to use its commercially reasonable efforts to obtain any remaining third-party consents or approvals. Purchaser shall, as agent or subcontractor for Seller, pay, perform and discharge fully the Liabilities of Seller thereunder from and after the Closing Date, as agreed between Purchaser and Seller, all of which shall be Assumed Liabilities. To the extent permitted under Law, Seller shall hold in trust for and pay to Purchaser promptly upon receipt thereof all income, proceeds and other monies received by Seller to the extent related to any such Purchased Assets (any Contracts) in connection with the arrangements under this Section 1.2. As soon as a consent for the sale, assignment, transfer, conveyance, delivery or assumption of any such Purchased Assets (including any Contract) is obtained, Seller shall promptly assign, transfer, convey and deliver such Contract, together with any related Assumed Liabilities, and/or Purchased Assets to Buyer for no additional consideration.

Section 1.3 Excluded Assets. The Excluded Assets shall consist of (i) [***] (collectively, the "**State-Licensed Cannabis Assets**"), (ii) [***] (collectively, the "**NY Cannabis Assets**"), and (iii) all assets, properties and rights of Seller listed on Schedule 1.3 (the "**Excluded Assets**").

Article II.
LIABILITIES.

Section 2.1 Assumption of Liabilities. Purchaser shall not, at any time, assume or agree to discharge or perform any expenses, obligations, costs, debts, liabilities, absolute or contingent, known or unknown, liquidated or unliquidated, whether due or to become due, regardless of when or by whom asserted, (a "**Liability**") of Seller, except Liabilities of Seller (i) listed on Schedule 2.1, (ii) accruing after the Closing Date under the executory portion of each of the Contracts listed on Schedule 1.1(f), or (iii) any and all Liabilities relating to the ownership and operation of the Purchased Assets to the extent first arising or accruing after the Closing (the "**Assumed Liabilities**").

Section 2.2 Excluded Liabilities. Notwithstanding Section 2.1 (and without implication that Purchaser is assuming any Liability of Seller not expressly excluded in this Section 2.2 and, where applicable, without implication that any of the following would constitute Assumed Liabilities but for the provisions of this Section 2.2), the following Liabilities of Seller shall not be assumed or discharged by Purchaser:

(a) Transaction Expenses. Any Liabilities for legal, accounting and investment banking fees and other expenses incurred by Seller or Owners in connection with the Transaction;

(b) Taxes. Any Liabilities for Taxes of any kind, including (i) any Taxes of Seller or its Affiliates; (ii) all Taxes arising out of or relating to the ownership, operation or conduct of the Business or the Purchased Assets attributable to any tax period ending prior to or on (and including) the Closing Date (including the pre-Closing portion of any Straddle Period determined in accordance with Section 7.9(a)); (iii) Transfer Taxes; and (iv) any Taxes imposed on or with respect to the Excluded Assets (collectively, the "**Excluded Taxes**");

(c) Breach of This Agreement. Any Liabilities of Seller or the Owners to the extent such constitute or result in a breach of any provision of this Agreement;

(d) Liability Claims. Any Liabilities relating to the operation of the Business prior to the Closing;

(e) Breach of Contract. Any Liabilities (whether asserted before or after the Closing) for any breach of any provision or claim contained in any Contract that is an Assumed Liability, to the extent that such breach or claim arose out of or by virtue of performance (or omission) thereunder directly or indirectly by or for Seller prior to the Closing;

(f) Employee Plans and Obligations. Any Liabilities arising out of or in connection with any employment agreement or Employee Plan, whether oral or written, or any Liabilities arising out of any employment relationship;

(g) Environmental Claims. Any claim, action, suit or proceeding arising from or related to (and any Liabilities related thereto), the presence, generation, emission, storage, treatment, transport or disposal of any Hazardous Substance from, to, at, in, on or under any facility owned or used by Seller in connection with the Business or otherwise, and Liabilities arising from violations of Environmental Laws, at any time, by Seller, or arising from or relating to the presence, generation, emission, storage, treatment, transport or disposal of any substance from, to, at, in, on or under any facility owned or used by Seller, at any time;

(h) Insurance. Any Liabilities of Seller for retrospective or similar insurance premium adjustments;

(i) Performance. Any Liabilities or obligations of Seller arising out of or related to its performance under this Agreement (regardless of whether such performance is required prior to or after the Closing Date), including, without limitation, any Liability or obligation arising under Seller's or the Owners' indemnification obligations under Article IX;

(j) Unassumed Executory Liabilities. Any Liabilities under or associated with Contracts that are not listed on Schedule 1.1(f) or, if listed, that were not properly assigned to Purchaser as contemplated by Section 1.2, unless Purchaser notifies Seller of its election to retain the rights and benefits under such Contracts notwithstanding any such improper assignment; and

(k) General Provision. Without limitation by the specific enumeration of the foregoing, any debt, Liability or other obligation of Seller, whether now or hereafter existing, known or unknown, accrued or contingent, not expressly assumed by Purchaser pursuant to the provisions of Section 2.1.

Article III.
PURCHASE CONSIDERATION.

Section 3.1 Purchase Price; Reimbursement of Inventory Expenses. The aggregate consideration to be delivered by Purchaser to Seller at the Closing shall be (i) 97,300 shares (the "**Shares**") of Purchaser's common stock, par value $0.001 per share (the "**Common Stock**"), (ii) 432,700 pre-funded warrants to purchase Common Stock, in substantially the form of warrant attached hereto as Exhibit A (the "**Pre-Funded Warrants**"), and (iii) Purchaser's assumption of the Assumed Liabilities (the "**Purchase Price**"). Notwithstanding anything to the contrary set forth in this Section 3.1, in addition to the Purchase Price, at the Closing, the Purchaser shall reimburse Seller for all Inventory in an amount equal to the Seller's cost relating to such Inventory; provided, however, that (i) the foregoing reimbursement payment shall be permitted to be paid at any time on or prior to the date that is thirty (30) days after the Closing Date and (ii) the reimbursement obligations in this Section shall not apply to Inventory financed in connection with that certain Secured Promissory Note, by and between Purchaser and Seller, dated December 6, 2024 (the "**Secured Note**").

Section 3.2 Allocation. Purchaser and Seller shall allocate the Purchase Price and any other amount treated as an amount realized for income Tax purposes among the Purchased Assets in accordance with the methodology set forth in Schedule 3.2 (the "**Allocation Schedule**") and Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"). The Parties shall file a Form 8594 with the Internal Revenue Service ("**IRS**") and all returns, declarations, reports, information returns and statements, attachments thereto and other documents required or permitted to be filed under the provisions of any applicable Law and relating to Taxes (including amended returns and claims for refund) ("**Tax Returns**") in a manner consistent with the Allocation Schedule except as otherwise required by a final (or similar) determination of a tax authority.

Section 3.3 Withholding. Notwithstanding any other provision in this Agreement, Purchaser (and any of its Affiliates or agents) shall be entitled to deduct and withhold from any payment pursuant to this Agreement such amounts as are required to be deducted and withheld under any applicable Law; provided, that prior to any such deduction and withholding, To the extent that amounts are so withheld or deducted and paid over to the applicable tax authority, such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been delivered and paid to Seller or other applicable recipient of payment in respect of which such deduction and withholding was made.

Article IV.
CLOSING.

Section 4.1 The Closing. Subject to Article X, the closing of the Transaction (the "**Closing**") shall take place, on a date mutually agreed upon by the Parties, no later than December 16, 2024, subject to the satisfaction or waiver of all of the conditions to closing set forth in Article X (the "**Closing Date**"), by electronic transmission of documents and signatures, or at such other time or place as the Parties hereto shall agree in writing, (the "**Outside Closing Date**"), provided that Purchaser may extend the Outside Closing Date in its sole discretion, by 30 days, if Purchaser is working in good faith, and using commercially reasonable efforts, to proceed to the Closing. The Closing shall be deemed effective at 8:00 a.m. Central time on the Closing Date. For purposes of this Agreement, "**Business Day(s)**" means any day on which commercial banks located in Chicago, Illinois are open for the conduct of ordinary banking business.

Section 4.2 Seller's Deliveries. Subject to the conditions set forth in this Agreement, at the Closing (except for the Inventory Statement, which Seller shall deliver as promptly as possible following the Closing), Seller shall deliver to Purchaser all of the following, all in form and substance reasonably satisfactory to Seller and to Purchaser and its counsel:

(a) Closing Certificate. A certificate executed on behalf of Seller, by its manager, to the effect that (i) the representations and warranties of Seller and the Owners contained herein were true on the date hereof and are true on the Closing Date with the same effect as though made on and as of the Closing Date; and (ii) Seller and the Owners have performed and complied with all of the agreements and covenants to be performed or complied with by Seller or the Owners under this Agreement prior to and as of the Closing Date;

(b) Instruments of Transfer. Duly-executed bills of sale, assignment and assumption agreements, assignments of Trademarks, all such other instruments of sale, assignment, or transfer as are necessary or appropriate to sell, assign, and transfer to Purchaser and to vest in Purchaser good and marketable title to the Purchased Assets, and any other document, instrument or agreement necessary to consummate the transaction contemplated by this Agreement (in each case, in form and substance acceptable to Seller and Purchaser and in recordable form, where appropriate);

(c) Inventory Statement. A statement of Seller's Inventory as of the Closing required to be delivered in accordance with this Section 4.2, prepared by Seller in accordance with GAAP, that (i) accurately reflects Seller's Inventory and (ii) Seller has not rejected (the "**Inventory Statement**");

(d) Good Standing Certificate. A Certificate of Status (i.e., certificate of good standing) dated not more than two (2) Business Days prior to the Closing Date with respect to Seller, issued by the Secretary of State of California;

(e) UCC Releases. UCC termination statements releasing each of the Liens upon the Purchased Assets other than Permitted Liens or such other evidence of payment in full of any such Liens in form and substance satisfactory to the Purchaser;

(f) Purchased Assets. All of the Purchased Assets;

(g) Consents. The consents or approvals necessary for the assignment of all of the Purchased Assets;

(h) Resolutions. A copy of any resolutions of Seller necessary to approve this Agreement and the transactions contemplated hereby (as determined by Purchaser in its sole discretion), certified as of the Closing Date as having been duly and validly adopted and as being in full force and effect on the Closing Date, authorizing the execution and delivery by Seller of this Agreement and the performance by Seller of the Transaction;

(i) Amendments. Evidence that Seller has amended the terms of any agreements with respect to the State-Licensed Cannabis Assets, prior to the Closing, so that such agreements contain (i) discretionary termination language in favor of the Seller to ensure Seller has the right to terminate such agreements in the event Purchaser requires such agreements to be terminated in accordance with its rights as further described in Section 7.8(a) and (ii) assignment provisions that permit the assignments contemplated by the Option (defined below), provided that, (a) if one or more counterparties to such agreements require that a payment be made in connection with executing such amendments, Seller shall provide Purchaser with prompt written notice, and Purchaser shall, within a reasonable amount of time, provide Seller with written notice of its intent to either (x) waive Seller's obligation to deliver evidence with respect to such amendment or (y) cover 50% of such payment and (b) if any such amendments are not obtained by the Closing Date, Seller shall continue to use its commercially reasonable efforts to obtain such amendments consistent with this Section 4.2(i);

(j) Form W-9. A valid and complete IRS Form W-9, duly executed by Seller;

(k) Consulting Agreements. With respect to each Owner, a consulting agreement, in the form attached hereto as Exhibit B (each, a "**Consulting Agreement**"), in each case, executed by the relevant Owner or its affiliate entity; and

(l) Intellectual Property Assignments. Evidence that all Intellectual Property used in connection with the Business has been properly assigned to Seller prior to the Closing.

Section 4.3 Purchaser's Deliveries. Subject to the conditions set forth in this Agreement, at the Closing Purchaser shall deliver to Seller:

(a) Purchase Price. The Purchase Price;

(b) Consulting Agreements. Copies of the Consulting Agreements executed by Purchaser;

(c) Assignment and Assumption Agreement. An assignment and assumption agreement with respect to the Contracts that constitute Purchased Assets, executed by Purchaser; and

(d) Corporate Consents. Copies of the corporate resolutions or consents necessary in order to approve Purchaser's entry into this Agreement and consummation of the transactions contemplated hereby.

Article V.
REPRESENTATIONS AND WARRANTIES OF SELLER.

Subject to the schedules attached hereto and incorporated herein by reference, Seller and the Owners, jointly and severally, hereby represent and warrant to Purchaser as follows:

Section 5.1 Corporate Organization and Authority. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite power and authority (company and other) to own, lease and operate its properties and assets used in connection with the Business and to conduct the Business as now being conducted.

Section 5.2 Authority Relative to Agreement; No Conflicts. Seller has the company power and authority to enter into this Agreement and to carry out Seller's obligations hereunder. The execution and delivery of this Agreement and the performance by Seller and the Owners of their obligations hereunder have been duly authorized by Seller and the Owners, and no other corporate or other proceedings are necessary to authorize such execution, delivery and performance, and the execution, delivery and performance hereof do not and will not conflict with or result in any violation of or constitute a breach or default under (i) any term of Seller's formation or governing documents, (ii) any agreement, permit or other instrument to which Seller or any Owner is a party, or by which Seller or any Owner is bound or to which any of the Purchased Assets or the Business is subject or (iii) any order, judgment or decree of any court or other Governmental Authority.

Section 5.3 Execution. This Agreement has been duly and validly executed and delivered by Seller and the Owners and will constitute valid and binding obligations of Seller and the Owners, respectively, enforceable against each of them in accordance with their respective terms.

Section 5.4 Reserved.

Section 5.5 Reserved.

Section 5.6 Absence of Certain Changes or Events.

(a) Material Adverse Changes. Except as otherwise set forth on Schedule 5.6(a), since September 30, 2024, there has not been any development or threatened development (including consummation of the Transaction) of a nature that has or, to Seller's and each Owner's reasonable belief, may result in a material adverse change in the financial condition or operations of the Business or the ability of Seller to perform this Agreement (collectively, "**Material Adverse Effect**").

(b) Certain Events. Except as otherwise set forth on Schedule 5.6(b), since September 30, 2024, Seller has conducted (and from the date hereof through the Closing, will conduct) the Business only in a commercially reasonable ordinary course manner and has acted reasonably and in good faith to maintain and enhance the Business and, without limiting the foregoing, Seller has not (and from the date hereof through the Closing, Seller will not have):

1. created or suffered to exist any Liens, other than Permitted Liens, or restrictions with respect to any of the Purchased Assets;

2. except for sales of Inventory in the usual and ordinary course of the Business, sold, leased to others, licensed to others or transferred any of Seller's assets or properties, except as otherwise set forth on Schedule 5.6(b);

3. suffered any material loss, or material interruption in use, of any material asset;

4. waived any rights related to the Business or arising under or in connection with any of the Purchased Assets, except in the ordinary course of Business;

5. (i) made, changed or revoked any Tax election, (ii) settled or compromised any Tax Liability, (iii) changed an annual accounting period or change (or made a request to any tax authority to change) any aspect of its method of accounting for Tax purposes, (iv) consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment, (v) entered into any Tax sharing, closing, or similar agreement in respect of any Taxes, or (vi) obtained or requested any Tax ruling, in each case, with respect to the Purchased Assets or the Business; or

6. acquired any assets or properties in connection with the Business other than in the ordinary course of the Business.

Section 5.7 Compliance with Laws.

(a) General. Except for violations of Federal Cannabis Laws in connection with its State-Licensed Cannabis Business and except for violations of the Federal Food, Drug & Cosmetics Act (the "**FDC&A**") (which exception, for the avoidance of doubt, shall not apply to other Laws whose restrictions overlap with those imposed under the FDC&A), to Seller's Knowledge, Seller is not, and has not been, in violation of any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law (each a "**Law**") of any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction (each a "**Governmental Authority**") within the jurisdictions set forth on Schedule 5.7(a). For purposes of this Agreement: (i) "**Federal Cannabis Laws**" means federal laws of the United States that make illegal the manufacture, possession, sale, or distribution of cannabis; and (ii) "**State-Licensed Cannabis Business**" means the Business to the extent it involves any products whose production, marketing, or sale is (a) legal under applicable state law but (b) illegal under Federal Cannabis Laws.

(b) Reserved.

Section 5.8 Taxes.

(a) Seller has properly completed and filed on a timely basis all Tax Returns required to have been filed with respect to Seller, the Purchased Assets or the Business and all such Tax Returns are true, correct and complete in all material respects. Seller and the Owners have timely paid all Taxes required to be paid by them or with respect to the Business or the Purchased Assets (regardless of whether shown on a Tax Return) in accordance with applicable Law. "**Taxes**" shall mean all taxes with respect to net income, capital gains, gross income, gross receipts, sales, use, transfer, ad valorem, franchise, profits, license, capital, withholding, payroll, employment, excise, goods and services, severance, stamp, occupation, premium, property, assessments, or other taxes or governmental charges of any kind whatsoever, together with any interest, fines and any penalties, additions to tax or additional amounts incurred or accrued under applicable Law, or assessed, charged or imposed by any Governmental Authority.

(b) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller. Seller is not involved in any nor is the Business or Purchased Assets the subject of any dispute whatsoever relating to Taxes, and has not received notice or threat of any pending audit or notice of deficiency from the IRS or any other tax authority. There are no unsatisfied liabilities for Taxes (including liabilities for interest, additions to Tax and penalties thereon and related expenses) with respect to any written notice of deficiency or similar document received by Seller with respect to any Tax. No claim has been made in writing by a tax authority in a jurisdiction where Seller has not filed a particular type of Tax Return or has not paid a particular type of Tax claiming that Seller or the Business is or may be subject to such filing requirement or such Tax by that jurisdiction, and there is no basis for any such claims to be made. There are no liens for Taxes upon any of the Purchased Assets except for statutory liens for current Taxes that are not yet due and payable.

(c) All Taxes that Seller has been required by law to deduct, withhold or to collect for payment have been duly and timely deducted, withheld and collected, and have been paid over to the appropriate tax authority in compliance with all applicable Law with respect to payments made to any current or former employee, independent contractor, other service provider, creditor, shareholder, customer, vendor, supplier, or other third party, and Seller has timely complied in all material respects with all information reporting and withholding requirements under all applicable Law, including maintenance of required records with respect thereto.

(d) No closing agreements, private letter rulings, technical advice memoranda, advance pricing agreement, consent to an extension of time to make an election, consent to a change a method of accounting or other similar agreements or rulings relating to Taxes have been entered into or issued by any Tax authority with or in respect of Seller, or the Business. Seller does not have a power of attorney with respect to any Tax that is in force as of the Closing Date.

(e) None of the Purchased Assets is an interest to any joint venture, partnership, or other arrangement or contract which could be treated as a partnership for U.S. federal income Tax purposes.

(f) Seller has collected and properly remitted all sales, use, value-added, goods and services and other similar Taxes required to have been collected and remitted with respect to sales or leases made or services provided by Seller or the Business, and for all sales, leases, or provisions of services that are exempt from such Taxes and that were made without charging or remitting such Taxes, Seller has received and retained any appropriate Tax exemption certificates and other documentations qualifying such sales, leases, or provision of services as exempt.

(g) Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(h) Seller is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011 4(b).

(i) None of the Purchased Assets held by the Seller are (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code. None of the Purchased Assets held by the Seller is tax-exempt use property within the meaning of Section 168(h) of the Code.

Section 5.9 Title to Assets. Seller has good and marketable title to all of the Purchased Assets, free and clear of all Liens, except for liens for current taxes, assessments and other governmental charges not yet due and payable ("**Permitted Liens**"). Upon transfer of the Purchased Assets to Purchaser at Closing, Purchaser will have good and marketable title to all of the Purchased Assets, free and clear of all Liens, other than Permitted Liens.

Section 5.10 Reserved.

Section 5.11 Reserved.

Section 5.12 Inventory. The Inventory listed on the Inventory Statement is all of the Inventory and is useable or saleable in the ordinary course of business as of the date of the Inventory Statement. All inventory of Seller reflected in the Inventory Statement consists of items of such quantity, quality and mix as are historically consistent with past business practices, are usable or saleable in the ordinary course of business consistent with past practice and are not subject to any write down or write off. All such Inventory of Seller is being held at [***], and no Inventory of Seller is with customers, agents, distributors, representatives or other Persons on consignment.

Section 5.13 Products.

(a) Products Liability. There are no pending or, to Seller's Knowledge, threatened Proceedings that involve any product alleged to have been processed, manufactured, marketed, or sold by Seller (including any product alleged to have borne any of Seller's Trademarks or to have been processed, manufactured, marketed, or sold by third parties at Seller's direction or pursuant to any contracts or other agreements to which any such third party and Seller are parties) ("**Products**"), including any such Proceedings pursuant to which any Products are alleged to have been defective, or improperly processed, manufactured or labeled; nor is there any valid basis for any such Proceeding. "**Proceeding**" means any claim, action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator. "**Seller's Knowledge**" means the actual knowledge of Seller and the Owners after due inquiry.

(b) Product Warranty. Each Product produced in connection with the Business has been produced and delivered in conformance with all contractual commitments, and Seller has no Liability (and there is no basis for any present or future Proceeding against Seller giving rise to any Liability) for replacement thereof. Except as set forth on Schedule 5.13, none of the Products produced in connection with the Business are subject to any guaranty, warranty, or other indemnity.

Section 5.14 Intellectual Property. Set forth on Schedule 5.14 is a true and complete list of all Patents, Trademarks, Trade Names, service marks and copyrights and all other Intellectual Property of whatever nature or description used in connection with the Business or that relate to the Business. To Seller's Knowledge, there is no restriction, infringement or challenge affecting the use of any of the Intellectual Property by Seller or its assignee in connection with the Business. Each item of Intellectual Property is freely transferable by Seller to Purchaser without the consent of any third party, and the Intellectual Property is sufficient in all respects to permit the continued lawful conduct by Purchaser of the Business in the manner now conducted by Seller. Seller is not in default or in violation with respect to any of the Intellectual Property or the terms or conditions by which such Intellectual Property was acquired or obtained, and no event has occurred that constitutes, or with due notice or lapse of time or both may constitute, a default by Seller under, or a violation of, or loss of rights in, any item of Intellectual Property. To Seller's Knowledge, none of the Products or operations of Seller in the conduct of the Business involves any infringement of any proprietary right of any other Person.

For purposes of this Agreement, "**Trade Names**" means (i) trade names, (ii) brand names and (iii) logos and all other names and slogans used in the Business; "**Trademarks**" means trademarks, service marks, brand marks, registrations thereof, pending applications for registration thereof, and such unregistered rights which are used in the Business; "**Patents**" means issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models).

Section 5.15 Reserved.

Section 5.16 Reserved.

Section 5.17 Contracts. Set forth on Schedule 1.1(f) is a list of all Contracts to which Seller is a party or to which Seller is bound. Seller has provided Purchaser with copies of all such Contracts.

All of the Contracts are valid and binding upon Seller and enforceable against the other parties thereto in accordance with their respective terms. Seller is not in breach of any of such Contracts, nor to Seller's Knowledge, is any other party to any such Contract in default thereunder, and no condition exists which, with notice or lapse of time or both, would constitute a default by Seller, or by any other party thereunder. Seller has not offered to any Person, and no Person is entitled to claim, any cash discount or other rebate or premium in connection with or on account of the purchase or sale of Products in connection with the Business. None of Seller or the Owners has provided or has received any notice of any intention to terminate any Contract, and there are no disputes pending or to Seller's Knowledge, threatened under any Contract.

Section 5.18 Litigation. Except as set forth on Schedule 5.18, there are no Proceedings pending or, to Seller's Knowledge, threatened against the Owners, Seller, or Seller's officers, directors, employees, or agents. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Proceeding.

Section 5.19 Consents. Except as set forth on Schedule 5.19, no notice to and no permit, authorization, consent or approval of any Governmental Authority or of any third party is necessary for the consummation by Seller or the Owners of the Transaction.

Section 5.20 Labor and Employee Matters.

(a) Seller's Employees. Seller has no employees. All individuals characterized and treated by Seller as independent contractors of the Business are properly treated as independent contractors under all applicable Laws.

Section 5.21 Customers and Suppliers. Set forth on Schedule 5.21 is a list of current suppliers to the Business and customers of the Business during the past twelve months. All customer and supplier files shall be turned over to Purchaser as of the Closing Date. Seller shall take all steps reasonably requested by Purchaser to deliver any and all such files to Purchaser. No supplier or material customer has threatened to cancel, materially decrease or terminate, or, to Seller's Knowledge, intends to cancel or otherwise terminate, the relationship of such Person with the Business.

Section 5.22 Effect of Transaction. The Purchased Assets constitute all of the assets and properties, tangible and intangible (other than Excluded Assets) that are used by Seller in the operation of the Business and that are necessary for the operation of the Business in the ordinary course consistent with past practice.

Section 5.23 Brokers. Except as set forth on Schedule 5.23, no agent, broker, investment banker, financial advisor or other Person is or will be entitled to any brokerage commission, finder's fee or like payment in connection with the Transaction based upon such arrangements made by or on behalf of Seller or the Owners. Seller and the Owners agree that they shall be jointly and severally liable for payment of any fees payable to the Persons listed on Schedule 5.23.

Section 5.24 Accuracy of Information. None of the representations, warranties or statements contained in this Agreement or in the Schedules or Exhibits hereto contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary in order to make any of such representations, warranties or statements not false or misleading in any material manner. Copies of all documents furnished by or on behalf of Seller to Purchaser or its representatives in connection with or pursuant to the terms of this Agreement are complete and accurate in all material respects. All documents (or copies thereof) referred to in the Schedules or Exhibits hereto have been delivered to Purchaser. All facts set forth in the Recitals as to Seller are true and correct.

Section 5.25 Solvency. Seller is not insolvent, and is able to pay its debts and all other obligations as and when they become due.

Section 5.26 Subsidiaries and Equity Investments; Joint Ventures. Seller does not have any direct or indirect subsidiaries. Seller does not, directly or indirectly, own any equity interest of any Person. Seller is not a direct or indirect participant in any joint venture, partnership or other similar arrangement.

Section 5.27 Investment Representations. In connection with the issuance by Purchaser of the Shares and the Pre-Funded Warrants (collectively, the "**Securities**") to the Seller:

(a) Seller is acquiring the Securities for its own account, not as nominee or agent, and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended (the "**Securities Act**");

(b) Seller understands that (i) the Securities have not been registered under the Securities Act; (ii) the Securities are being issued pursuant to an exemption from registration, based in part upon the Purchaser's reliance upon the statements and representations made by Seller and the Owners in this Agreement, and that the Securities must be held by Seller indefinitely, and that Seller must, therefore, bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration; (iii) each certificate or book entry representing the Securities will be endorsed with substantially the following legend until the earlier of (1) the Securities have been registered for resale by Seller or (2) the date the Securities are eligible for sale under Rule 144 under the Securities Act:

> [NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE][THIS SECURITY HAS NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.
>
> The Purchaser will instruct any transfer agent not to register the transfer of the Securities (or any portion thereof) until the applicable date set forth in clause (iii) above unless the conditions specified in the foregoing legends are satisfied, or other satisfactory assurances of such nature are given to the Purchaser;

(c) Seller and each Owner has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in connection with the transactions contemplated in this Agreement. Seller and each Owner has, in connection with its decision to acquire the Securities, relied only upon the representations and warranties contained herein. Further, Seller and each Owner has had such opportunity to obtain additional information and to ask questions of, and receive answers from, the Purchaser, concerning the terms and conditions of the investment and the business and affairs of the Purchaser, as Seller or such Owner considers necessary in order to form an investment decision;

(d) Seller and each Owner is an "accredited investor" as such term is defined in Rule 501(a) of the rules and regulations promulgated under the Securities Act;

(e) Seller is not acquiring the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over the television or radio or presented at any seminar or any other general solicitation or general advertisement;

(f) Seller and each Owner understands that nothing in this Agreement, or any other materials presented to such Person in connection with its acquisition of the Securities constitutes legal, tax or investment advice. Seller and each Owner has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its acquisition of Securities;

(g) Seller and each Owner acknowledges that it has independently evaluated the merits of the transactions contemplated by this Agreement, that it has independently determined to enter into the transactions contemplated hereby, that it is not relying on any advice from or evaluation by any other person;

(h) Seller and each Owner does not presently intend to, along or together with others, make a public filing with the Securities and Exchange Commission to disclose that it has (or that it together with such other persons or entities have) acquired, or obtained the right to acquire, as a result of the Closing (when added to any other securities of Purchaser that it or they then own or have the right to acquire), in excess of 19.999% of the outstanding shares of Common Stock or the voting power of the Purchaser on a post-transaction basis that assumes that the Closing shall have occurred;

(i) Seller and each Owner acknowledge and agree that he/it has had the opportunity to consult his/its own independent legal, tax, accounting and other advisors with respect to such Seller and each Owner's Tax and other economic consequences to himself/itself of the purchase, receipt or ownership of the Shares and Pre-Funded Warrants being acquired by Seller hereunder, including the Tax consequences under federal, state, local and other income Tax Laws of the United States or any other country, and the possible effects of changes in such Tax Laws;

(j) None of Seller and Owners is relying on Purchaser or any of its Affiliates or any of their respective employees, agents, representatives or advisors with respect to the legal, Tax, economic and related considerations of an investment in the Shares and Pre-Funded Warrants; and

(k) As of the date hereof, and as of the Closing Date, Seller and each Owner acknowledges and agrees that it does not and will not (between the date hereof and the Closing Date) engage in any transaction, including, but not limited to a short sale, of the Purchaser's voting stock or any other type of hedging transaction involving the Purchaser's securities (including, without limitation, depositing shares of the Purchaser's securities with a brokerage firm where such securities are made available by the broker to other customers of the firm for purposes of hedging or short selling the Purchaser's securities).

Article VI.
REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Purchaser hereby represents, warrants and covenants to Seller as follows:

Section 6.1 Corporate Organization; Authority. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. Purchaser has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder require approval by the Board of Directors of Purchaser, and no other corporate proceedings on the part of Purchaser are necessary to authorize such execution, delivery and performance. Subject to obtaining such approval, this Agreement will be duly executed by Purchaser and will be the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

Section 6.2 Absence of Conflicts. Subject to the required authorization by Purchaser's Board of Directors, the execution, delivery and performance by Purchaser of this Agreement, and the consummation of the Transaction do not and will not, conflict with or result in any violation of, or constitute a breach or default under any term of the charter documents or by-laws of Purchaser; result in a breach of or constitute a default under any material note, bond, mortgage indenture, loan or credit agreement or other material agreement or instrument to which Purchaser is a party or by which Purchaser's assets may be bound; or violate any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or of any Governmental Authority applicable to Purchaser or by which any of Purchaser's assets may be bound.

Section 6.3 Consents. No notice to and no permit, authorization, consent or approval of any Governmental Authority is necessary for the consummation by Purchaser of the Transaction, except, with respect to the removal of the Exchange Cap (as such term is defined in the Pre-Funded Warrants), for the Requisite Stockholder Approval (as defined below).

Section 6.4 Absence of Proceedings. No action or proceeding has been instituted against Purchaser before any Governmental Authority (i) seeking to restrain or prohibit the execution and delivery of this Agreement or the consummation of the Transaction, or (ii) that would, if decided adversely to Purchaser, have a material adverse effect on Purchaser's ability to perform its obligations under this Agreement.

Section 6.5 Finders' Fees. Neither Purchaser nor any of its officers, directors or employees has made any agreement or taken any other action that might cause Seller to become liable for any brokerage fees, commissions or finders' fees in connection with the Transaction.

Section 6.6 SEC Reports; Financial Statements. Purchaser has filed or furnished, as applicable, (A) its quarterly reports on Form 10-Q for its fiscal quarters ended after June 30, 2024 and September 30, 2024, and (B) all other forms, reports, schedules, and other statements required to be filed or furnished by it with the SEC under the Securities Exchange Act or the Securities Act since January 1, 2024 (collectively, the "**Purchaser SEC Reports**"). As of its respective date, and, if amended, as of the date of the last such amendment, each Purchaser SEC Report complied in all material respects with the applicable requirements of the Securities Act and the Securities Exchange Act and any rules and regulations promulgated thereunder applicable to the Purchaser SEC Report. As of its respective date, and, if amended, as of the date of the last such amendment, no Purchaser SEC Report contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments from any comment letters received by Purchaser from the SEC relating to reports, statements, schedules, registration statements or other filings made by Purchaser with the SEC.

Article VII.
COVENANTS.

Section 7.1 Conduct of Business of Seller Prior to the Closing Date. From the date of this Agreement through the Closing Date, Seller shall (and the Owners shall cause Seller to) carry on the Business and its affairs in the ordinary course in substantially the same manner as heretofore conducted. Without limiting the generality of the foregoing, prior to the Closing Date, Seller shall not (and the Owners shall not permit Seller to), without the prior written consent of Purchaser:

(a) Incur any indebtedness in connection with the Purchased Assets or the Business other than trade payables in the ordinary course of business;

(b) adopt or amend any bonus, pension, profit-sharing, retirement, benefit, welfare, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation or other similar fringe or employee benefit plans, funds, programs or arrangements (including employment contracts or executive compensation agreements, written or oral), which cover, are maintained for the benefit of, or relate to any or all of the employees of the Business ("**Employee Plans**");

(c) Enter into any transaction not in the ordinary course of the Business, except as expressly permitted or required hereunder; or

(d) Except for this Agreement, enter into any oral or written agreement, contract, commitment, arrangement or understanding with respect to (i) the matters described in clauses (a) through (c) above or (ii) Intellectual Property.

Section 7.2 Public Announcements. Seller and the Owners shall not issue or make any press release or other public statements with respect to the Transaction to customers or suppliers except and unless such release, statement or announcement has been approved by Purchaser (which approval may be withheld in Purchaser's sole discretion). Purchaser may issue or make any such press release or other public statements in Purchaser's discretion.

Section 7.3 Bulk Sales Compliance. Seller and the Owners shall indemnify and hold Purchaser Indemnified Parties harmless as provided in Article IX for any claim, Liability or expense arising from or in connection with non-compliance with any applicable bulk sales law as it pertains to the Transaction.

Section 7.4 Access to Information. Between the date of this Agreement and the Closing Date, Seller will cooperate and give Purchaser and its authorized representatives full access to all personnel, offices and other facilities and to all Books and Records of Seller and will permit Purchaser to make copies thereof. The representations and warranties of Seller contained herein shall not be deemed waived or otherwise affected by any such investigation made by Purchaser or any of its representatives, or by the delivery by Seller to Purchaser of any documents in connection with this Agreement.

Section 7.5 Supplements to Schedules. From time to time prior to the Closing, Seller will promptly supplement or amend the Schedules to this Agreement with respect to any matter that, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in such Schedules or that is necessary to correct any information in such Schedules that has been rendered inaccurate thereby. No supplement or amendment shall have any effect for the purpose of determining (i) satisfaction of the conditions to Closing set forth in Section 10.1 hereof or (ii) the compliance by Seller with the covenants of Seller set forth herein.

Section 7.6 Title; Risk of Loss. Legal title, equitable title and risk of loss with respect to the Purchased Assets shall not pass to Purchaser until the Purchased Assets are transferred at the Closing.

Section 7.7 Product Claims and Returns. Seller and the Owners shall be responsible for customer claims relating to services rendered by Seller prior to the Closing Date and customer claims relating to, or returns of, Products produced prior to the Closing Date. If a customer makes a claim or seeks a return and, in the judgment of Purchaser the claim or return is proper, Purchaser may replace or repair, as the case may be, the services rendered or product purchased at Purchaser's then generally prevailing prices and labor rates. Such repairs or returns shall be for the account of Seller and the Owners who shall promptly, jointly and severally, indemnify Purchaser for the amounts thereof.

Section 7.8 Matters Related to the State-Licensed Cannabis Business.

(a) Contingent upon the Closing, for a period of 10 years beginning on the Closing Date, Purchaser hereby grants to Seller a royalty-free, non-exclusive, non-sublicenseable (except as explicitly provided in this Section 7.8(a)), and non-transferable, license to use (i) the recipes for Products that, prior to the Closing Date, were produced, marketed, or sold in connection with the State-Licensed Cannabis Business and (ii) the Second Nature Señorita® and Señorita® Trademarks, in each case, solely for the purpose of sublicensing such rights to [***] to the extent necessary to permit them to fulfil their respective obligations under that certain [***] (the "**License**"). Notwithstanding the foregoing, the License shall terminate upon Purchaser's exercise of the Option (defined below); provided that, notwithstanding the foregoing, Purchaser may, at any time during such ten (10) year period, in its sole discretion, terminate the License by providing written notice to Seller.

(b) Reserved.

(c) If Purchaser provides its written consent to Seller's entering into an additional contract with respect to the production, marketing, or sale of Products in connection with the State-Licensed Cannabis Business, such contracts shall qualify as State-Licensed Cannabis Assets hereunder.

(d) At any time during the 10 years following the Closing Date, Purchaser shall have the right, upon delivering written notice to Seller, to purchase the State-Licensed Cannabis Assets and the NY Cannabis Assets from Seller in exchange for $1.00 (USD) (with Purchaser having the right to exclude any portion of such assets from such acquisition, in its sole discretion) (the "**Option**"). While the Option remains outstanding, Seller and Owners shall not permit any of the State-Licensed Cannabis Assets or NY Cannabis Assets to be transferred, licensed, or otherwise encumbered (including any action that would in any way conflict with or hinder Purchaser's (or its assignee's) rights with respect to the Option). Purchaser may freely assign its rights with respect to the Option, in its sole discretion. Seller shall, at all times during such ten (10) year period, cooperate with Purchaser in connection with all relevant filings required by Purchaser to secure its interest in maintaining the value of the Option.

(e) Prior to the Closing, Purchaser may, in its sole discretion, elect to classify any Purchased Assets as State-Licensed Cannabis Assets for purposes of this Agreement.

Section 7.9 Tax Matters.

(a) All personal property, real property and ad valorem (and other similar) Taxes levied with respect to the Purchased Assets for any Tax period of Seller beginning on or before the Closing Date and ending after the Closing Date (the "**Straddle Period**") shall be apportioned between Seller and Purchaser based on the number of days included in such Straddle Period through and including the Closing Date and the number of days included in such Straddle Period after the Closing Date, respectively. If the amount of such Taxes are retroactively assessed after the Closing to a date on or prior to the Closing Date against any of the Purchased Assets, then at such time as the actual or retroactively assessed Taxes are known, a cash settlement shall be made between Seller and Purchaser based on such actual amounts within the earlier of thirty (30) days of such determination or ten (10) days before such amount is due to the applicable tax authority.

(b) Purchaser shall prepare or cause to be prepared and shall file or cause to be filed all personal property, real property and ad valorem (or similar) Tax Returns for the Purchased Assets for a Straddle Period.

(c) Notwithstanding anything in this Agreement to the contrary, all Tax Returns with respect to any transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with, or as a result of, the Transaction (including any real property transfer Tax and any other similar Tax) (the "**Transfer Taxes**") incurred in connection with or as a consequence of the Transaction shall be timely filed by the Party hereto responsible for such filing under applicable Law, and all such Transfer Taxes (and all reasonable out-of-pocket costs for preparation of such Tax Returns) shall be borne by Seller. Purchaser and Seller shall reasonably cooperate to reduce or eliminate any Transfer Taxes to the extent permitted by applicable Law.

(d) The Parties agree to utilize, or cause their respective Affiliates to utilize, the "standard procedure" set forth in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320 for wage reporting with respect to any transferring Business employees.

(e) Purchaser shall promptly, and in any event within ten (10) days of receipt, notify Seller in writing upon receipt by Purchaser or any of its Affiliates of notice of any pending or threatened Tax audits, examinations or assessments which, if successful, is reasonably expected to result in an indemnity payment pursuant to Section 9.2 (a "**Tax Claim**"). Notwithstanding anything to the contrary in this Agreement, Seller shall have the right to control any Tax Claim relating solely to a Tax period ending on or before the Closing Date (excluding a Straddle Period). If Seller chooses not to control such Tax Claim, Purchaser may defend the same in such manner as it may deem appropriate. The Party hereto controlling a Tax Claim shall in any event keep the other Party hereto informed of the progress of such Tax Claim, shall promptly provide such other Party with copies of all material documents (including material notices, protests, briefs, written rulings and determinations and correspondence) pertaining to such Tax Claim and shall not settle such Tax Claim without such other Party's advance written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 7.10 Lock-Up.

(a) Seller and each Owner agrees that, without the Purchaser's prior written consent, Seller shall not, for a period (the "**Lock-Up Period**") commencing on the Closing Date and ending on the two-year anniversary of the Closing Date, (i) offer, pledge, sell, contract to sell, grant any option or contract to purchase, purchase any option or contract to sell or otherwise dispose of, directly or indirectly, any of the Securities, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Securities or such other securities, in cash or otherwise. Notwithstanding the foregoing, (i) commencing six (6) months following the Closing Date and thereafter for the remainder of the Lock-Up Period, the Seller may, subject to applicable Law, sell Securities that, in the aggregate, constitute no more than fifty percent (50%) of the Securities issued hereunder (assuming for purposes of such calculation the full exercise of all Pre-Funded Warrants) and (ii) at any time after the Closing, Seller may, subject to applicable Law, sell up to One Hundred Eighty-Five Thousand Five Hundred (185,500) Pre-Funded Warrants (which Pre-Funded Warrants shall count against the fifty percent (50%) of the Securities referenced in clause (i) of this sentence).

(b) Seller and each Owner authorizes the Purchaser during the Lock-Up Period to cause the transfer agent of the Purchaser's Common Stock to decline the transfer of the Securities not in compliance with Section 7.10(a) above, and to note stop transfer restrictions on the stock register and other records relating to the Securities. Seller and each Owner hereby agrees that each outstanding certificate or book entry notation representing the Securities shall, during the Lock-Up Period, and in addition to any other legends as may be required in compliance with federal securities laws, bear a legend reading substantially as follows:

> THE SALE OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF AN ASSET PURCHASE AGREEMENT DATED DECEMBER _, 2024, BETWEEN AGRIFY CORPORATION, THE HOLDER LISTED ON THE FACE HEREOF, AND CERTAIN OTHER PARTIES. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF AGRIFY CORPORATION AND WILL BE PROVIDED TO THE HOLDER HEREOF UPON REQUEST. NO TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF AGRIFY CORPORATION UNLESS ACCOMPANIED BY EVIDENCE OF COMPLIANCE WITH THE TERMS OF SUCH AGREEMENT.

(c) Seller hereby unconditionally and irrevocably grants to Purchaser a right of first refusal to purchase all or any portion of the Securities that Seller or its Permitted Transferees may propose to include in any assignment, sale, offer to sell, pledge, mortgage, hypothecation, encumbrance, disposition of or any other like transfer or encumbering of any Security (or any interest therein) to or for the benefit of any Person (other than Seller, the Owners, or their Affiliates if such Person has expressly agreed to be subject to the terms of this Section 7.10(c) (a "**Permitted Transferee**)) (any such transfer, a "**Proposed Transfer**"), at the same price and on the same terms and conditions as those offered to such Person (the "**Prospective Transferee**"). Seller or its applicable Permitted Transferee must deliver a written notice (the "**Proposed Transfer Notice**") to Purchaser not later than five (5) Business Days prior to the consummation of such Proposed Transfer. Such Proposed Transfer Notice shall contain the material terms and conditions (including price and form of consideration) of the Proposed Transfer, the identity of the Prospective Transferee and the intended date of the Proposed Transfer. To exercise its right of first refusal under this Section 7.10(c), Purchaser must deliver a written notice to Seller or the applicable Permitted Transferee that Purchaser intends to exercise its right of first refusal as to some or all of the Securities proposed to be transferred (the "**Transfer Securities**") with respect to any Proposed Transfer (such notice, the "**Purchase Notice**") within four (4) Business Days after delivery of the Proposed Transfer Notice specifying the number of Transfer Securities to be purchased by the Purchaser. If the consideration proposed to be paid for the Transfer Securities is in property, services or other non-cash consideration, the fair market value of the consideration shall be as agreed between the Seller and Purchaser in good faith. If Purchaser for any reason cannot or does not wish to pay for the Transfer Securities in the same form of non-cash consideration, Purchaser may pay the cash value equivalent thereof, as determined in accordance with the immediately preceding sentence. The closing of the purchase of Transfer Securities by the Purchaser and Seller or its Permitted Transferee shall take place, and all payments from the Purchaser shall have been delivered to Seller or its Permitted Transferee, by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Transfer; and (ii) ten (10) Business Days after delivery of the Proposed Transfer Notice.

Section 7.11 Stockholder Approval. Following the Closing Date, Purchaser agrees to use its reasonable best efforts to obtain, at the next annual meeting of the stockholders of the Purchaser (at which a quorum is present) (the "**Stockholder Meeting**"), the Requisite Stockholder Approval (as defined below). Purchaser will prepare and file with the SEC a proxy statement to be sent to Purchaser's stockholders in connection with the Stockholder Meeting (the "**Proxy Statement**"). The Proxy Statement shall include the Board of Directors' recommendation that the holders of shares of Purchaser's Common Stock vote in favor of the Requisite Stockholder Approval. If the Requisite Stockholder Approval is not obtained at the Stockholder Meeting, Purchaser will continue to submit the Requisite Stockholder Approval for stockholder approval at each annual meeting of stockholders until the Requisite Stockholder Approval is obtained, and the Board of Directors will recommend that the holders of shares of Purchaser's Common Stock vote in favor of the Requisite Stockholder Approval at each such meeting. As used herein, "**Requisite Stockholder Approval**" means the stockholder approval contemplated by Nasdaq Listing Rule 5635(d) with respect to the removal of the Exchange Cap from the Pre-Funded Warrants (as such term is defined therein); provided, however, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of the Nasdaq Capital Market, such stockholder approval is no longer required.

Article VIII.
RESTRICTIVE COVENANTS.

In consideration of the Purchase Price, Seller and the Owners covenant with Purchaser as follows:

Section 8.1 Acknowledgments of Seller and Owners. Seller and the Owners acknowledge that Purchaser has paid valuable consideration for the assets of the Business, particularly customer and supplier lists, distribution records, the Intellectual Property, goodwill and other proprietary business information and trade secrets of the Business. The use by Seller or the Owners of these relationships and such confidential information in a business or other activity that competes with Purchaser would provide the competing business with an unfair advantage over Purchaser. Accordingly, Purchaser wishes to restrict Seller's and the Owners' use of such information and their ability to compete with Purchaser. Seller and the Owners agree to comply with the terms of this Agreement, all of which are reasonable and necessary to protect the confidential business information and trade secrets being acquired by Purchaser and to prevent any unfair advantage from being conferred upon Seller or the Owners.

Section 8.2 Non-Interference with Business Relations; Non-Competition; Non-Solicitation.

(a) After the Closing Date, during the Restricted Period (as hereinafter defined), neither Seller nor the Owners shall, directly or indirectly, solicit, induce or attempt to solicit or induce any supplier, licensee or other business relation of Purchaser to cease doing business with Purchaser, or in any way interfere with the relationship between Purchaser and any customer or business relation of Purchaser.

(b) After the Closing Date, for the period commencing on the Closing Date and ending on the date that is five (5) years after the Closing Date (the "**Restricted Period**"), within the United States and Canada, neither the Owners nor Seller (including its officers, directors, managers and employees, but only when acting in such capacity) shall Compete, directly or indirectly (including through any other Person, alone or as an equityholder, member, partner, officer, director, manager, investor, independent contractor or employee of any Person), with the Purchaser or its Affiliates. Seller or the Owners shall be deemed to "Compete" hereunder if, during the Restricted Period, he/it directly or indirectly, itself/himself or through another Person, (i) engages in activities or otherwise owns, manages, invests, advises with respect to, controls or participates in a business that produces, markets, distributes, or licenses Intellectual Property with respect to beverages containing tetrahydrocannabinol or (ii) uses the Second Nature Señorita® or Señorita® Trademark for any other purpose. Notwithstanding the foregoing, the restrictions in this Section 8.2 shall not apply, prior to the Option's exercise, to Seller's conduct of the State-Licensed Cannabis Business using the Second Nature Señorita® and Señorita® Trademarks to the extent permitted under the License or to Seller's operation of the NY Cannabis Assets.

(c) During the Restricted Period, neither the Owners nor Seller (including its officers, directors, managers, and employees, but only when acting in such capacity) shall, including through another Person: (i) solicit, encourage, or induce (or attempt to solicit, encourage or induce) any employee of the Purchaser or its Affiliates to leave his or her employment or engagement; (ii) hire any person who was an employee of the Purchaser or its Affiliates at any time during the twelve (12) month period immediately prior to the date on which such hiring would take place; or (iii) call on, solicit or service any current customer, vendor, licensee, licensor or other business relation of the Purchaser, its Affiliates, or the Business in order to solicit, encourage or induce (or attempt to solicit, encourage or induce) such Person to cease doing, decrease or adversely alter its business therewith.

(d) During the Restricted Period, neither the Owners nor Seller (including its officers, directors, managers and employees) shall make any oral or written statement that disparages any of the Purchaser or its Affiliates, except in connection with a legal proceeding or as is otherwise required by law to cooperate with a Governmental Authority.

Section 8.3 Confidential Information. Seller and the Owners acknowledge that Purchaser's business interests related to the sale of the Products require the fullest practical protection and confidential treatment of all information related to the Business that is not generally known within the relevant trade group or by the public, including all documents, writings, memoranda, business plans, illustrations, designs, plans, processes, programs, inventions, reports, sources of supply, customer lists, supplier lists, trade secrets and all other valuable or unique information and techniques acquired, developed or used by Seller related to the Business, its operations, employees and customers (hereinafter collectively termed "**Protected Information**"). Seller and the Owners expressly acknowledge and agree that Protected Information constitutes trade secrets and confidential and proprietary business information acquired by Purchaser in the Transaction. Protected Information shall not include information that is or becomes part of the public domain through no breach of this Agreement by Seller or the Owners. Seller and the Owners acknowledge that the Protected Information is essential to the success of the Business, and understand that it is the policy of Purchaser to maintain as secret and confidential the Protected Information, which gives Purchaser a competitive advantage over those who do not know the Protected Information. Accordingly, Seller and the Owners agree to hold such Protected Information in a fiduciary capacity, to keep secret and to treat confidentially and not to, and not to permit any other Person to, directly or indirectly, appropriate, divulge, disclose or otherwise disseminate to any other Person nor use in any manner, for Seller's or any other Person's purposes or benefit, any Protected Information, and not to use or aid others in using any such Protected Information in competition with Purchaser, except to the extent that disclosure is required by law. Seller and the Owners shall provide Purchaser with notice as far in advance of any required disclosure as is practicable in order for Purchaser to obtain an order or other assurance that any information required to be disclosed will be treated as Protected Information and Seller and the Owners shall use their best efforts to cooperate with Purchaser in connection therewith and in furtherance thereof. This obligation of non-disclosure of information shall continue to exist for so long as such information remains Protected Information.

Section 8.4 Scope. If, at the time of enforcement of any of the provisions of this Article VIII, a court of competent jurisdiction determines that the restrictions stated therein are unreasonable under the circumstances then existing, the Parties agree that the maximum period, scope, or geographical area reasonable under the circumstances shall be substituted for the stated period, scope, or geographical area. The Parties further agree that such court shall be allowed to revise the restrictions contained therein to cover the maximum period, scope, or geographical area permitted by law.

Section 8.5 Remedies. Seller and the Owners agree that if either shall commit or threaten to commit a breach of any of the covenants and agreements contained in this Article VIII, then Purchaser shall have the right to seek and obtain all appropriate injunctive and other equitable remedies therefor, in addition to any other rights and remedies that may be available at Law, it being acknowledged and agreed that any such breach would cause irreparable injury to Purchaser and that money damages would not provide an adequate remedy therefor.

Article IX.
INDEMNIFICATION.

Section 9.1 Survival of Representations, Warranties and Covenants. The respective representations, warranties and covenants of each of the Parties to this Agreement shall be deemed to be material and to have been relied upon by the Parties hereto, and, shall survive the Closing, and the consummation of the Transaction for a period of 18 months, provided that the representations, warranties, and covenants contained in Sections 5.1, 5.2, 5.3, 5.8, 5.9, 5.14, 5.23, and 5.27 (collectively, the "**Fundamental Representations**") shall survive as follows: Sections 5.1, 5.2, 5.3, 5.9, and 5.23 shall survive indefinitely, and Sections 5.8, 5.14, and 5.27 shall survive for the applicable statute of limitations, in each case, regardless of any investigation made by or on behalf of, or disclosure to, any Party to whom such representations, warranties or covenants have been made. The rights and remedies of any Person based upon, arising out of or otherwise in respect of any inaccuracy in or any representation, or any breach of any warranty, covenant or agreement contained in this Agreement, including the right of Purchaser Indemnified Parties to be indemnified for Liabilities of Seller that are not Assumed Liabilities, shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy, breach or indemnity is based may also be the subject matter of any representation, warranty, covenant or agreement contained in this Agreement as to which there is no inaccuracy or breach.

Section 9.2 Seller's and Owners' Indemnification. Subject to the terms and conditions of this Article IX, Seller and the Owners, jointly and severally, shall indemnify and hold harmless Purchaser and its Affiliates and their respective officers, directors, managers, members, stockholders, agents, successors and assigns (collectively, "**Purchaser Indemnified Parties**"), jointly and severally, from and against and in respect of any and all demands, claims, threatened claims, causes of action, administrative orders and notices, losses, costs, fines, Liabilities, penalties, damages (direct or indirect) and expenses (including, without limitation, reasonable legal, paralegal, accounting and consultant fees and other expenses incurred in the investigation and defense of any actual or threatened claims or actions) (hereinafter collectively called "**Losses**") resulting from, in connection with or arising out of:

(a) The inaccuracy of any representation or the breach of any warranty made by Seller or the Owners in this Agreement;

(b) The breach by Seller or the Owners of any of the covenants or agreements in this Agreement;

(c) Any Liabilities of Seller or the Owners, except for the Assumed Liabilities, including (i) any and all Losses whatsoever relating to the Business prior to the Closing and (ii) Excluded Taxes;

(d) Any failure by Seller or the Owners to comply with any so-called "bulk sales" laws applicable to the Transaction; and

(e) Any claim, action, suit or proceeding, actual or threatened, relating to any of the foregoing.

"**Affiliate**" means any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person with whom it is affiliated.

Section 9.3 Purchaser's Indemnification. Purchaser shall indemnify and hold harmless Seller and its Affiliates and their respective officers, directors, stockholders, agents, successors and assigns, from and against and in respect of any and all Losses resulting from, in connection with or arising out of:

(a) The inaccuracy of any representation or the breach of any warranty made by Purchaser in this Agreement;

(b) The breach by Purchaser of any of the covenants or agreements in this Agreement; and

(c) Any claim, action, suit or proceeding relating to any of the foregoing.

Section 9.4 Cooperation. A Party or Parties against whom an indemnification claim ("**Claim**") has been asserted pursuant to this Article IX (individually and collectively "**Indemnifying Party**") shall have the right, at their own expense, assisted by counsel of their own choosing, to participate in the defense of any action or proceeding brought by a third party (including any Governmental Authority) which resulted in said Claim (a "**Third Party Claim**"), and if such right is exercised, the Party or Parties entitled to indemnification (individually and collectively "**Indemnified Party**") and the Indemnifying Party shall reasonably cooperate in the defense of such action or proceeding.

Section 9.5 Nature of Other Liabilities. In the event any Indemnified Party should have a Claim against any Indemnifying Party hereunder that does not involve a Third Party Claim, the Indemnified Party shall transmit to the Indemnifying Party a written notice (the "**Indemnity Notice**") describing in reasonable detail the nature of the Claim, and the basis of the Indemnified Party's request for indemnification under this Agreement. If the Indemnifying Party does not notify the Indemnified Party within thirty (30) days from its receipt of the Indemnity Notice that the Indemnifying Party disputes such Claim, the Claim specified by the Indemnified Party in the Indemnity Notice shall be deemed a Liability of the Indemnifying Party hereunder, with respect to which the Indemnified Party is entitled to prompt indemnification hereunder.

Section 9.6 Nuisance Claims. Purchaser agrees to act as an agent for Seller with respect to Third Party Claims made in the ordinary course of business that are related to dissatisfaction with a Product ("**Nuisance Claims**"), by (i) customers of Seller who or which are current, active customers of Purchaser at the time of the Third Party Claim or (ii) customers who have purchased products of the Business within the one (1) year period prior to the Closing Date. Purchaser may settle, in its sole discretion, any such Nuisance Claims with a cost of $1,000 or less in any single instance or $10,000 in the aggregate. Purchaser may settle any Nuisance Claims with a cost of, or that are likely to have, a cost that is greater than $1,000 in any single instance or $10,000 in the aggregate only with the prior approval of Seller. Purchaser shall be entitled to indemnification for all Losses related to such settlements. The Parties acknowledge that Purchaser is acting as Seller's agent with respect to the Nuisance Claims and that Purchaser is not assuming any Liabilities related to the Nuisance Claims nor any Liabilities of Seller that are not Assumed Liabilities.

Section 9.7 Offset. Purchaser shall have the right to offset against its obligations to make payments hereunder the amount of any Claim with respect to which it is entitled to receive indemnification, or any other payment Purchaser is entitled to receive, under this Agreement.

Section 9.8 Cap on Liability. Notwithstanding anything to the contrary set forth in this Agreement, except to the extent caused by a Party's fraud, willful misrepresentation, or gross negligence, the maximum aggregate liability of Seller and Owners, on the one hand, and Purchaser, on the other hand, in each case, with respect to breaches of representations or warranties made hereunder (other than the Fundamental Representations) shall not exceed $300,000. Notwithstanding anything to the contrary set forth in this Agreement, the maximum aggregate liability of Seller and Owners, on the one hand, and Purchaser, on the other hand, in each case, with respect to breaches of Fundamental Representations shall not exceed an amount equal to (i) (a) the aggregate sale proceeds received by Seller, the Owners, or their respective Affiliates in arms-length transactions involving the sale of the Shares, the Pre-Funded Warrants, or shares of Common Stock issued to Seller, the Owners, or their respective Affiliates in connection with the Pre-Funded Warrants' exercise, *plus* (b) the product of (x) the aggregate number of Shares, shares of Common Stock resulting from the exercise of the Pre-Funded Warrants, and the unexercised Pre-Funded Warrants, in each case, which have not been sold by Seller, the Owners, or their respective Affiliates in arms-length transactions and (y) the five (5) Business Day trailing volume-weighted average trading price of the Common Stock on the Nasdaq Capital Market on the day before the applicable indemnity payment is due and payable hereunder, *less* (ii) the aggregate amount of the income Tax payments owed by Seller and Owners in connection with the closing of the Transaction (the "**Purchase Price Cap**"). For purposes of determining the Purchase Price Cap's applicability to a given indemnification obligation hereunder, the Purchase Price Cap shall be calculated as of the date on which such payment would otherwise become due and payable. The number of Shares, Pre-Funded Warrants, and shares of Common Stock issued in connection with the exercise of Pre-Funded Warrants shall be subject to adjustment for stock splits, reverse stock splits, and other similar transactions.

Article X.
CONDITIONS TO CLOSING.

Section 10.1 Conditions to Obligations of Purchaser. All obligations of Purchaser under this Agreement are subject to the fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived by Purchaser:

(a) Representations and Warranties of Seller and the Owners. All representations and warranties made by Seller and the Owners in this Agreement shall, in all material respects, be true and correct as of the time of the Closing, as if again made by Seller and the Owners as of such time.

(b) Performance of Seller's and Owners' Obligations. Seller and the Owners shall have performed in all respects all obligations (including obtaining all consents and approvals and delivering to Purchaser all of the items set forth in Section 4.2) required under this Agreement to be performed by it on or prior to the Closing Date.

(c) Pending Proceedings. No action or proceeding shall be pending seeking to affect the Transaction.

(d) No Material Adverse Change. During the period from the date hereof to the Closing, there shall have been no Material Adverse Effect.

(e) Other Closing Documents. Purchaser shall have received such other certificates, instruments and documents reasonably requested by Purchaser.

(f) Due Diligence. A full due diligence review of the Purchased Assets, the Excluded Assets and the Business shall have been completed by Purchaser, its affiliates, its legal counsel, its outside consultants or others appointed by Purchaser, and Purchaser shall have been satisfied, in its sole and absolute discretion, with the results of such review (with the cost of such review to be paid by Purchaser).

Section 10.2 Conditions to Obligations of Seller. All obligations of Seller under this Agreement are subject to the fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived by Seller:

(a) Representations and Warranties of Purchaser. All representations and warranties made by Purchaser in this Agreement shall, in all material respects, be true and correct as of the time of Closing, as if again made by Purchaser as of such time.

(b) Performance of Purchaser's Obligations. Purchaser shall have delivered all of the items set forth in Section 4.3 and otherwise performed in all material respects all obligations required under this Agreement to be performed by it on or prior to the Closing Date.

Article XI.
CERTAIN ADDITIONAL COVENANTS.

Section 11.1 Further Assurances. Upon the request of Purchaser at any time after the Closing, Seller and Owners shall forthwith execute and deliver such instruments of assignment, transfer, conveyance, endorsement, direction or authorization and other documents as Purchaser or its counsel may reasonably request in order to perfect title of Purchaser and its successors and assigns to the Purchased Assets or otherwise to effect the purposes of this Agreement.

Section 11.2 Access to and Preservation of Information and Records. For a period of five (5) years following the Closing Date, each of Purchaser and Seller shall preserve any books and records relating to the Business and shall provide to the other Party reasonable access to such books and records and to their respective employees and agents as the other Party shall reasonably request for purposes of preparing Tax Returns required to be filed by such Party, and responding to audits thereof, or as otherwise needed by such Party with respect to matters related to the Business. Each Party shall also provide the other Party such information as such other Party shall reasonably request for such purposes.

Section 11.3 Fulfillment of Assumed Liabilities. From and after Closing, Purchaser shall pay, discharge and perform each of the Assumed Liabilities when and as due and shall observe all of the covenants, terms and conditions of each Contract related to the Assumed Liabilities.

Article XII.
TERMINATION AND ABANDONMENT.

Section 12.1 Methods of Termination. This Agreement may be terminated and the Transaction may be abandoned at any time prior to the Closing:

(a) by the mutual written consent of Purchaser and Seller;

(b) by Purchaser, if Seller or the Owners breaches any of the obligations in Section 7.1;

(c) by Purchaser, if Purchaser determines, in its sole discretion, that it is not satisfied with the results of its diligence review contemplated by Section 10.1(f);

(d) by either Party if the Closing has not occurred prior to the Outside Closing Date.

Section 12.2 Procedure Upon Termination. In the event of termination of this Agreement by Seller or Purchaser pursuant to this Article XII, written notice thereof shall be given to the other Party and this Agreement shall terminate and the Transactions shall be abandoned, without further action by any Party to this Agreement. If this Agreement is so terminated, no Party to this Agreement shall have any right or claim against another Party on account of such termination unless this Agreement is terminated by a Party on account of the breach of any representation, warranty, term or covenant herein by the other Party or Parties. Notwithstanding anything in this Agreement to the contrary, this Article XII and Sections 8.1-8.5, 9.2-9.5, 13.1, 13.3-13.5, 13.7 and 13.8-13.10 shall survive any termination of this Agreement.

Article XIII.
MISCELLANEOUS PROVISIONS.

Section 13.1 Successors and Assigns and No Third-Party Beneficiaries. This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors, representatives and assigns; provided, however, that Seller shall not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of Purchaser. Nothing in this Agreement shall confer upon any Person not a party to this Agreement, or the legal representatives of such Person, any rights (including, without limitation, rights as a third-party beneficiary) or remedies of any nature or kind whatsoever under or by reason of this Agreement.

Section 13.2 Expenses. Except as otherwise provided herein, all costs and expenses incurred by a Party in connection with this Agreement and with the consummation of the Transactions shall be paid by such Party.

Section 13.3 Notices. All notices, requests and other communications to any Party hereunder shall be in writing and shall be given to such Party at its address set forth below or at such other addresses as shall be furnished by any Party by like notice to the others effective upon actual receipt, or on the second business day after deposit if sent by a recognized overnight delivery service or by registered or certified mail (postage prepaid, return receipt requested), in each case to the address specified in this Section.

(a) If to Purchaser, to:

Agrify Corporation
[***]
[***]
[***]
[***]
[***]

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

Dentons US LLP
233 S. Wacker Dr., #5900
Chicago, Illinois 60606
Attention: Ross Docksey and Jacob Styburski

(b) If to Seller or the Owners, to:

c/o Joel Gott
[***]
[***]

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

Carle Mackie Power & Ross LLP
100 B Street, Suite 400
Santa Rosa, CA 95401
Attn: Trevor Codington and Dan Reidy

or such other address or persons as the Parties may from time to time designate in writing in the manner provided in this Section 13.3.

Section 13.4 Entire Agreement. This Agreement, together with the Exhibits and the Schedules attached hereto, represents the entire agreement and understanding of the Parties hereto with respect to the Transaction. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements among the Parties related to the subject matter of this Agreement, whether written or oral, and all prior drafts thereof, all of which are merged into this Agreement.

Section 13.5 Amendments and Remedies. This Agreement may be amended only by a written instrument signed by Purchaser and Seller. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have at law or in equity.

Section 13.6 Time of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 13.7 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable so long as the economic or legal substance of the Transaction is not affected in any manner adverse to either Party. Upon such determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transaction be consummated as originally contemplated to the fullest extent possible.

Section 13.8 Rules of Interpretation.

(a) The term “including” and the abbreviation “e.g.” mean “including, without limitation” unless the context clearly states otherwise.

(b) The recitals to this Agreement shall be deemed to be a part of this Agreement.

(c) All reference herein to this “Agreement” shall include the Exhibits and Schedules attached hereto.

(d) The word “shall” when used in this Agreement is a word of mandate, construed as “must.”

(a) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

Section 13.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. The signature of any party that is delivered by telecopy or other means of electronic execution and/or delivery (including DocuSign) shall be effective and deemed an original.

Section 13.10 Governing Law; Dispute Resolution.

(a) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

(b) Informal Dispute Resolution. In the event of any dispute, claim or controversy arising out of or relating to this Agreement, the Parties shall first attempt in good faith to resolve their dispute through in-person or video conference negotiation between authorized representatives of each of the Parties with authority to settle the relevant dispute for a period of not less than ten (10) days from the delivery of written notice under this Section 13.10(b). Either Party may commence this negotiation by delivering written notice to the other Party pursuant to the terms outlined in this Agreement. The Parties may agree to engage the services of a jointly agreed-upon mediator to facilitate this in-person meeting, in which case they agree to share equally in the costs of the mediation.

(c) Arbitration. Any unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise expressly provided in this Agreement, or (ii) any such controversies or claims arising out of a Party's breach of its restrictive covenants hereunder for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration with a single arbitrator mutually agreed upon by the Parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed, then by one arbitrator having reasonable experience in corporate transactions of the type provided for in this Agreement and who is chosen by JAMS. The arbitration shall take place in Chicago, Illinois in accordance with the JAMS International Arbitration Rules then in effect, and judgment upon any award rendered in such arbitration will be final and binding and may be entered in any court having jurisdiction thereof. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated; (b) depositions of all Party witnesses; and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with Illinois laws, the arbitrator shall be required to provide in writing to the Parties the basis for the award or order of such arbitrator, and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

(d) JURY TRIAL WAIVER. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.10(D).

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed as of the date first written above.

SELLER: DOUBLE OR NOTHING LLC

By: /s/ Joel Gott
Name: Joel Gott
Title: Manager

PURCHASER: AGRIFY CORPORATION

By: /s/ Benjamin Kovler
Name: Benjamin Kovler
Title: Interim Chief Executive Officer

OWNERS: JOEL GOTT

/s/ Joel Gott

CHARLES BIELER

/s/ Charles Bieler

Exhibit 4.1

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

PRE-FUNDED COMMON STOCK PURCHASE WARRANT

AGRIFY CORPORATION

Warrant Shares: 432,700 Issue Date: December 12, 2024

THIS PRE-FUNDED COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, Double or Nothing, LLC, a California limited liability company, or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Issue Date set forth above (the "Initial Exercise Date") and until this Warrant is exercised in full (the "Termination Date") but not thereafter, to subscribe for and purchase from Agrify Corporation, a Nevada corporation (the "Company"), up to 432,700 shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle 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.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Purchase Agreement" means that certain Asset Purchase Agreement, dated on or about the date hereof, among the Company, the initial Holder hereof, and the other parties signatory thereto, as the same may be modified or amended from time to time.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Trading Day" means a day on which the Common Stock is traded on a Trading Market.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transfer Agent" means Broadridge Corporate Issuer Solutions, Inc., the current transfer agent of the Company, with a mailing address of 51 Mercedes Way, Edgewood, New York 11717, and any successor transfer agent of the Company.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holder of the Warrant and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The aggregate exercise price of this Warrant, except for a nominal exercise price of $0.001 per Warrant Share, was pre-funded to the Company on or prior to the Initial Exercise Date and, consequently, no additional consideration (other than the nominal exercise price of $0.001 per Warrant Share) shall be required to be paid by the Holder to any Person to effect any exercise of this Warrant. The Holder shall not be entitled to the return or refund of all, or any portion, of such pre-paid aggregate exercise price under any circumstance or for any reason whatsoever, including in the event this Warrant shall not have been exercised prior to the Termination Date. The remaining unpaid exercise price per share of Common Stock under this Warrant shall be $0.001, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked onto the holder period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c). In the case of a dispute as to the determination of the number of Warrant Shares to be issued pursuant to the cashless exercise, or the arithmetic calculation of the Warrant Shares to be issued thereunder, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 5(e).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 under the Securities Act ("Rule 144") (assuming cashless exercise of the Warrants), and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

v. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vi. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations.

i. Beneficial Ownership Limitation. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% (or, to the extent the Holder is at such time an "affiliate" of the Company as such term is defined pursuant to Rule 144, 49.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

ii. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the aggregate number of shares of Common Stock issued by the Company pursuant to the Purchase Agreement, including, without limitation, the shares of Common Stock issued upon the closing under the Purchase Agreement and the Warrant Shares issuable hereunder, would exceed 370,670, which equals 19.99% of the number of shares of Common Stock outstanding immediately prior to the closing under the Purchase Agreement (the "Exchange Cap"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Nasdaq Capital Market for issuances of Common Stock in excess of such amount. In the event that the Holder shall sell or otherwise transfer this Warrant, the transferee shall be subject to the Exchange Cap on an aggregate basis together with the Holder or any other partial assignees of this Warrant. The Exchange Cap shall be (i) reduced, on a share-for-share basis, by the number of shares of Common Stock issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the transactions contemplated by the Purchase Agreement under applicable rules of Nasdaq and (ii) appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split or other similar transaction that occurs after the Initial Exercise Date.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged, subject to the limitation on fractional shares in Section 2(d)(iv). Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation or the Exchange Cap) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Exchange Cap, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Exchange Cap).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) other than a dividend or other distribution of the type described in Section 3(a) above (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation or the Exchange Cap) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Exchange Cap, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Exchange Cap).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of more than 50% of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. For the avoidance of doubt, except as expressly set forth in this Warrant, in no event does this agreement result in the Company having an obligation to issue cash or other assets to the Holder.

e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

f) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Warrant Register of the Company, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Warrants under the Securities Act.

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c), in no event shall the Company be required to net cash settle an exercise of this Warrant.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except as otherwise waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 2468 Industrial Row Drive, Troy, Michigan 48084, Attention: Chief Executive Officer, email address: ben.kovler@agrify.com, or such other email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder or the beneficial owner of this Warrant, on the other hand.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

AGRIFY CORPORATION

By: /s/ Benjamin Kovler
Name: Benjamin Kovler
Title: President and Chief Executive Officer

NOTICE OF EXERCISE

TO: AGRIFY CORPORATION

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____
Signature of Authorized Signatory of Investing Entity: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Date: _____

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ __, _____

Holder's Signature: _____

Holder's Address: _____

Exhibit 99.1

Agrify Corporation Closes on Acquisition of Señorita

TROY, Mich., Dec. 16, 2024 (GLOBE NEWSWIRE) – Agrify Corporation (Nasdaq: AGFY) ("Agrify" or the "Company"), a leading provider of branded innovative solutions for the cannabis and hemp industries, has closed on its previously announced acquisition of certain assets from Double or Nothing LLC, the owner and creator of the Señorita brand of hemp-derived THC ("HD9") drinks.

"This is great news for Agrify shareholders! We believe Señorita is the best tasting drink in the fastest growing, most exciting beverage category in the country," said Agrify Chairman and Interim CEO Ben Kovler. "Cannabis-based beverages like Señorita deliver consumers an enjoyable experience without the downsides of alcohol. This high demand is propelling Señorita founders Joel Gott and Charles Bieler with the team towards innovation and product development as we launch Paloma in January and Ranch Water later in 2025. Given our enthusiasm for HD9 drinks, the Agrify Board continues to explore a variety of alternatives for the extraction and cultivation businesses within the Company while focusing on optimizing shareholder value creation."

Señorita was designed and formulated by world-class winemakers Charles Bieler and Joel Gott. Recognizing a growing generational demand for adult beverage alternatives, Bieler and Gott gave the classic margarita a modern twist—replacing alcohol with THC to create a delightful, hangover-free beverage alternative. Through the use of all-natural, premium ingredients like organic Mexican agave, fresh lime juice and sweet, tangy mango, Señorita quickly gained acclaim, taking home the top spot in The *High Times* Cannabis Cup just one year after inception. Gott and Bieler continue to collaborate on the brand with Kovler and the Agrify team.

"We're incredibly excited about the energy and momentum Ben and the team have brought to the Señorita business," said Señorita co-founder Charles Bieler. "When Joel and I created this unique brand, we always anticipated rapid growth, exciting new products and expanded distribution, and now those goals are coming to fruition even faster than we imagined. Paloma and Ranch Water are just the beginning, and we cannot wait for even more Americans to experience Señorita THC drinks."

Señorita currently offers two award-winning flavors – classic Lime Jalapeño Margarita and Mango Margarita. The brand's third flavor, Paloma, will launch in January and will bring together Ruby Red grapefruit, lime, and pomelo, offering consumers another refreshing flavor profile with the same vacation vibe and fresh taste consumers love. A fourth flavor, low-calorie Ranch Water, will debut in 2025.

Señorita's HD9 products are currently available at top retailers including Total Wine, ABC Fine Wine & Spirits, and Binny's in nine U.S. states and Canada. Products are also available for direct-to-consumer purchase where permissible under state law at senoritadrinks.com.

This acquisition of certain Canadian and U.S. hemp-derived assets from Double or Nothing LLC, the owner and creator of the Señorita HD9 beverages, as previously disclosed, was done in exchange for 530,000 shares of Agrify common stock or common stock equivalents. Following the transaction, Agrify has approximately 2.0M common shares outstanding and 7.6M warrants.

About Agrify (Nasdaq:AGFY)

Agrify Corporation ("Agrify" or the "Company") is a developer of branded innovative solutions for the cannabis and hemp industries in extraction, cultivation and more. Agrify's proprietary micro-environment-controlled Vertical Farming Units (VFUs) enable cultivators to produce the highest quality products with unmatched consistency, yield, and return on investment at scale. Agrify's comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates. For more information, please visit Agrify at http://www.agrify.com.

About Señorita

Designed and formulated by best friends and world-class winemakers Charles Bieler and Joel Gott, Señorita is known for its clean, fresh taste and commitment to high-quality, natural ingredients. Señorita offers a low-sugar, low-calorie alternative to alcoholic beverages. Señorita's HDT products are currently available to purchase at brick-and-mortar locations in Canada and nine U.S. states, including Alabama, Florida, Georgia, Illinois, Louisiana, Minnesota, Ohio, Tennessee and Wisconsin, with plans for expansion across additional states. Products are also available for direct-to-consumer purchase where permissible under state law via senoritadrinks.com.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Agrify and other matters. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements including, without limitation, statements regarding the potential future market for HD9 beverages, the ability to expand Señorita's flavor options, distribution channels and markets and the expected timing thereof and the overall potential growth of the Señorita business.In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "coming," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this press release are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. You should carefully consider the risks and uncertainties that affect our business, including those described in our filings with the Securities and Exchange Commission ("SEC"), including under the caption "Risk Factors" in our Annual Report on Form 10-K filed for the year ended December 31, 2023 with the SEC, which can be obtained on the SEC website at www.sec.gov. These forward-looking statements speak only as of the date of this communication. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements, whether as a result of any new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our public announcements and filings with the SEC.

Contact

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