

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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): September 20, 2023

American Oncology Network, Inc.

(Exact name of registrant as specified in its charter)

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|---|---|--|
| Delaware (State or other jurisdiction of incorporation) | 001-40177 (Commission File Number) | 85-3984427 (I.R.S. Employer Identification No.) |
| 14543 Global Parkway, Suite 110 Fort Myers, FL (Address of principal executive offices) | | 33913 (Zip Code) |

(833) 886-1725

(Registrant's telephone number, including area code)

Digital Transformation Opportunities Corp.
10250 Constellation Blvd, Suite 23126
Los Angeles, CA 90067
(Former name or former address, if changed since last report)

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

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

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|----------------------|--|
| Class A common stock, par value \$0.0001, per share | AONC | The Nasdaq Stock Market LLC |
| Warrants, each whole warrant exercisable for one share of Class A common stock | AONCW | The Nasdaq Stock Market LLC |

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

Emerging growth company

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

Explanatory Note

As previously disclosed, Digital Transformation Opportunities Corp. (“DTOC”), American Oncology Network, LLC, (“AON”), GEF AON Holdings Corp. (“AON Class C Preferred Investor”), and DTOC Merger Sub, Inc., a direct, wholly owned subsidiary of DTOC (“Merger Sub”) entered into a Business Combination Agreement (the “Business Combination Agreement”), dated as of June 14, 2023 (which further amended and restated the Business Combination Agreement entered into by DTOC and AON as of October 5, 2022, and amended and restated on January 6, 2023, and April 27, 2023), pursuant to which, among other transactions, on September 20, 2023 (the “Closing Date”), DTOC and AON undertook a series of transactions (the “Business Combination”) resulting in the organization of the combined post-business combination company as an umbrella partnership C corporation, in which substantially all of the assets and the business of the combined company are held by AON, and DTOC became a member of AON. In connection with the closing of the Business Combination, DTOC changed its name to “American Oncology Network, Inc.” (sometimes referred to herein as “New AON”).

On September 19, 2023, DTOC held a special meeting of its stockholders (the “Special Meeting”) in connection with the Business Combination. At the Special Meeting, DTOC stockholders voted to approve the Business Combination with AON and related proposals. Prior to the Special Meeting, a total of 1,699,558 shares of common stock, par value \$0.0001, of DTOC (“DTOC Common Stock”) were presented for redemption for cash at a price of approximately \$10.50 per share in connection with the Special Meeting.

Unless the context otherwise requires, “we,” “us,” “our” and the “Company” refer to DTOC and its consolidated subsidiaries prior to the completion of the Business Combination (the “Closing”) and New AON and its consolidated subsidiaries following the Closing. All references herein to the “Board” refer to the board of directors of DTOC or New AON, as applicable.

As a result of, and in connection with, the Closing, among other things, (i) AON amended and restated its operating agreement (the “Amended and Restated AON LLC Agreement”) to reclassify its existing Class A units, Class A-1 units and Class B units into a single class of AON common units that were exchanged on a one-to-one basis for shares of New AON Class A common stock (“New AON Class A Common Stock”) and its existing AON Class C units into AON Series A preferred units; (ii) AON converted profit pool units of certain of AON’s subsidiaries into an equal number of AON common units and shares of New AON Class B common stock (“New AON Class B Common Stock”), which together are exchangeable into shares of New AON Class A Common Stock (together with the New AON Class B Common Stock, the “New AON Common Stock”); (iii) New AON amended and restated its charter (the “Charter”) to provide for (a) the conversion of all existing shares of DTOC Class B common stock into shares of New AON Class A Common Stock on a one-to-one basis, (b) amendment of the terms of New AON Class B Common Stock to provide holders voting rights but no economic rights and (c) designation of a new series of New AON preferred stock as Series A convertible preferred stock (the “New AON Series A Preferred Stock”) with such rights and preferences as provided for in the certificate of designation of the New Aon Series A Preferred Stock (the “New AON Series A Certificate of Designation”); and (iv) among other things, (a) AON issued common units to New AON in exchange for a combination of cash and shares of New AON Class B Common Stock and warrants to acquire shares of New AON Class B Common Stock (the “Class B Prefunded Warrants”), (b) New AON was admitted as a member of AON, (c) AON distributed shares of New AON Class B common stock or Class B Prefunded Warrants, as applicable, to AON equityholders, (d) New AON reserved a specified number of additional shares of New AON Class A Common Stock after the Closing for issuance to eligible participants, (e) Merger Sub merged with and into the AON Class C Preferred Investor whereby the separate existence of Merger Sub ceased and New AON issued a number of shares of New AON Series A Preferred Stock equal to the number of AON Series A preferred units held by the AON Class C Preferred Investor to AEA Growth Management LP, the parent of AON Class C Preferred Investor (“AEA Growth”) in exchange for all the shares of common stock held by AEA Growth in the AON Class C Preferred Investor (the “First Step”), (f) promptly after the First Step, the AON Class C Preferred Investor merged with and into New AON whereby the separate existence of the AON Class C Preferred Investor ceased and New AON held all the AON Series A preferred units and (g) from and after the Closing (but subject to lock-up restrictions), the AON common equityholders (other than New AON) will have the right (but not the obligation) to exchange AON common units together with an equal number of shares of New AON Class B Common Stock (whether held directly or indirectly through Class B Prefunded Warrants) for shares of New AON Class A Common Stock.

In addition, in connection with the Closing of the Business Combination, DTOC completed the offer to the holders of AON Class B-1 units to exchange their AON Class B-1 units for such number of newly issued shares of New AON Class A Common Stock equal to the ratio set forth in the Business Combination Agreement (such offer, the “Exchange Offer”). DTOC and AON solicited consents from the holders of AON Class B-1 units to make certain amendments to the terms of the awards and the unit grant agreements pursuant to which the AON Class B-1 units were granted, which provided for the automatic exchange, as of immediately prior to the adoption of the Amended and Restated AON LLC Agreement, of all outstanding AON Class B-1 units into shares of New AON Class A Common Stock (collectively, the “Proposed Amendments”). The requisite number of holders of Class B-1 units provided their consent to the Proposed Amendments, and as a result, in connection with the closing of the Business Combination, all AON Class B-1 units were exchanged for an aggregate of 1,047,343 shares of New AON Class A Common Stock.

Immediately after giving effect to the Business Combination, there were (i) 9,532,354 issued and outstanding shares of New AON Class A Common Stock, which includes common stock held by DTOC stockholders and Digital Transformation Sponsor LLC (the “Sponsor”) (including those shares subject to vesting and forfeiture pursuant to the Sponsor Support Agreement), but does not include shares which may be issued under the Incentive Equity Plan (as defined below) and (ii) 25,109,551 issued and outstanding shares of New AON Class B Common Stock. As of the Closing Date, (i) AON’s equityholders (not including AEA Growth) beneficially owned approximately 63.3% of the outstanding shares of New AON Common Stock, (ii) the public stockholders of DTOC immediately prior to the Closing beneficially owned approximately 0.36% of the outstanding shares of New AON Common Stock, (iii) the Sponsor and the DTOC officers and directors immediately prior to the Closing Date beneficially owned approximately 20.2% of the outstanding shares of New AON Common Stock, and (iv) AEA Growth beneficially owned approximately 16.1% of the outstanding shares of New AON Common Stock (based upon conversion of the New AON Series A Preferred Stock at an initial conversion price of \$10.00 per share).

Item 1.01 Entry into a Material Definitive Agreement.

Amended and Restated AON LLC Operating Agreement

On September 20, 2023, in connection with the consummation of the Business Combination, the Amended and Restated AON LLC Agreement came into effect. As a result of the closing of the Business Combination, New AON operates its business through AON, and the operations of AON, and the rights and obligations of the AON equityholders are governed by the Amended and Restated AON LLC Agreement.

Under the Amended and Restated AON LLC Agreement, AON is managed by a board of managers consisting of (a) two managers designated by holders of common units representing more than 50% of the total common units entitled to vote ("Non-PubCo Managers") and (b) three managers designated by New AON ("PubCo Managers"). Except as otherwise specifically required under the Amended and Restated AON LLC Agreement, the AON board of managers manages and controls all business activities and operations of AON and control the day-to-day management of the business of AON and its subsidiaries. New AON, without the consent of any holders of common units, is not entitled to increase or decrease (i) the size of the board of managers and/or (ii) the number of PubCo Managers and Non-PubCo Managers on the board of managers; provided, that the consent of the holders of a majority of the New AON Series A Preferred Stock is required before New AON increases or decreases the number of PubCo Managers and/or Non-PubCo Managers in a manner that would result in the PubCo Managers ceasing to represent a majority of the board of managers of the AON.

Following the earlier of (a) the date that is the six month anniversary of the Closing and (b) the date after the Closing on which New AON consummates a change of control transaction that results in all of New AON's stockholders having the right to exchange their Class A common stock for cash securities or other property (the period commencing on the Closing and expiring on such date, the "AON Lock-Up Period"), AON common equityholders (other than New AON) have the right to require AON to redeem all or a portion of their common units, together with the cancellation of an equal number of shares of New AON Class B Common Stock (or the partial or full cancellation of a Class B Prefunded Warrant, as applicable), for an equal number of shares of New AON Class A Common Stock; provided however that, a holder of AON common units may not exchange their common units for New AON Class A Common Stock that would result in such holder owning more than 4.99% of the outstanding New AON Class A Common Stock immediately after such redemption (the "Beneficial Ownership Limitation") and no more than 4.99% of the voting power of New AON when combined with any securities of New AON or any securities convertible into New AON, subject to certain exceptions. As the AON equityholders cause their common units to be redeemed or exchanged, holding other assumptions constant, New AON's membership interest in AON will correspondingly increase, the number of shares of New AON Class A Common Stock outstanding will increase, and the number of shares of New AON Class B Common Stock (whether held directly or indirectly through Class B Prefunded Warrants) will decrease.

Under the Amended and Restated AON LLC Agreement, subject to certain obligations, the AON board of managers has the right to determine when distributions will be made to the AON unitholders and the amount of any such distributions. If AON authorizes a distribution, such distribution will be made consistent with the preferred return of any outstanding AON Series preferred unit and to the AON unitholders on a pro rata basis in accordance with their respective percentage ownership of AON common units.

The Amended and Restated AON LLC Agreement provides that, except in certain specified circumstances, at any time New AON issues a share of New AON Class A Common Stock or any other equity security, the net proceeds received by New AON with respect to such issuance, if any, shall be concurrently contributed to AON, and AON shall issue to New AON one AON common unit or other economically equivalent equity interest. Conversely, if at any time, any shares of New AON Class A Common Stock are redeemed, repurchased or otherwise acquired, AON shall redeem, repurchase or otherwise acquire an equal number of AON common units held by New AON, upon the same terms and for the same price, as the shares of New AON Class A Common Stock redeemed, repurchased or otherwise acquired.

Other material terms of the Amended and Restated AON LLC Agreement are described in the dated as of Proxy Statement/Prospectus (as defined below) in the section entitled “*Summary of the Proxy Statement / Prospectus-Related Agreements-Amended and Restated AON LLC Agreement*” and that information is incorporated herein by reference.

The foregoing description of the Amended and Restated AON LLC Operating Agreement is not complete and is subject to and qualified in its entirety by reference to the Amended and Restated AON LLC Operating Agreement, a copy of which is attached hereto as Exhibit 3.1 and the terms of which are incorporated by reference herein.

New AON Series A Certificate of Designations

In connection with the closing of the Business Combination and the merger between Merger Sub and the AON Class C Preferred Investor under the First Step, New AON issued AEA Growth 6,651,610 shares of New AON Series A Preferred Stock. The New AON Series A Preferred Stock are convertible into shares of New AON Class A Common Stock in accordance with the terms of the Certificate of Designations of Series A Preferred Stock of New AON (the “New AON Series A Certificate of Designations”), which was adopted by the Board immediately prior to the Closing.

Under the New AON Series A Certificate of Designations, the New AON Series A Preferred Stock accrues dividends at the annual rate of 8.0% of the original price per share, plus the amount of previously accrued, but unpaid dividends, compounded semi-annually, and participates with the New AON Common Stock on all other dividends (the “Accrued Dividends” which, together with the aggregate investment by the AON Class C Preferred Investor, will be referred to as the “Accrued Value”). The Accrued Dividends may be paid in cash or accumulate and compound into Accrued Value.

Upon any liquidation, winding-up or dissolution or deemed liquidation event, the holders of New AON Series A Preferred Stock are entitled to receive available proceeds before any distribution is made to holders of junior securities in an amount per share equal to the greater of (i) the Accrued Value times an applicable premium or (ii) such amount per share as would have been payable had all shares of New AON Series A Preferred Stock been converted into New AON Common Stock immediately prior to the liquidation event, winding up or dissolution, in either case in accordance with the terms and conditions of the New AON Series A Certificate of Designations.

The New AON Series A Preferred Stock votes together with the New AON Class A Common Stock and New AON Class B Common Stock on an as-converted basis, except as required by law and in other specified circumstances. Each holder of New AON Series A Preferred Stock is entitled to cast the number of votes equal to the number of whole shares of common stock into which the shares of New AON Series A Preferred Stock held by such holder are convertible. The holders of the New AON Series A Preferred Stock are also entitled to elect one director to the Board (the “Preferred Director”), as long as the holders hold 5% or more of the voting power of all then-outstanding shares of capital stock of New AON entitled to vote generally at an election of directors. The Preferred Director may be removed without cause by, and only by, the affirmative vote of such holders. For as long as 50% of the shares of New AON Series A Preferred Stock issued and outstanding as of their date of issuance are outstanding, New AON may not, without the affirmative vote or action by written consent of holders of a majority of the then-outstanding shares of New AON Series A Preferred Stock, voting together as a separate class, take certain actions, including but not limited to (i) amending, altering, or repealing any provision of the Charter, the New AON Series A Certificate of Designations, the Amended and Restated Bylaws, or the Amended and Restated AON LLC Agreement in a manner that either adversely affects the rights, privileges or preferences (economic or otherwise) of the New AON Series A Preferred Stock, (ii) amending, altering, or changing the rights, preferences or privileges of the preferred stock of New AON, (iii) reclassifying, altering or amending any Junior Stock (as defined in the New AON Series A Certificate of Designations) in a manner which renders such Junior Stock senior to or on parity with the New AON Series A Preferred Stock or Parity Stock (as defined in the New AON Series A Certificate of Designations) in a manner which renders such Parity Stock senior to the New AON Series A Preferred Stock; (iv) issuing or obligating itself to issue any New AON shares which are senior to or pari passu with (or any equity security or debt instrument that is exercisable for or convertible into equity securities of New AON that are senior to or pari passu with) the New AON Series A Preferred Stock, (v) incurring or refinancing any indebtedness that either (1) results in New AON having a ratio of total leverage (calculated as its net debt) to its trailing twelve-month Adjusted EBITDA (as defined in the New AON Series A Certificate of Designations) at any time following the incurrence of such indebtedness that is more than three times, (2) provides for security over New AON’s assets that is broader than outstanding indebtedness at the Issue Date, or (3) has materially more restrictive covenants than indebtedness outstanding as of the issue date; (vi) making any redemption, repurchase, dividend, or distribution (other than tax distributions) on any equity securities, or permit any of its subsidiaries to take any such action, other than redemptions of or dividends or distributions on the New AON Series A Preferred Stock, and repurchases of equity securities from former service providers in connection with the cessation of such service at no greater than the original purchase price; (vii) with respect to New AON or AON or any of their subsidiaries (other than subsidiaries with de minimis assets and operations), (1) initiate or commence an insolvency proceeding, including any state or federal insolvency proceeding, (2) effectuate an assignment for the benefit of creditors, or (3) elect to dissolve, liquidate or otherwise wind-up affairs; (viii) entering into any transaction between New AON or any of its subsidiaries on one hand, and any member of the board of directors, executive officer or member of senior management of New AON or any of its subsidiaries, or securityholder of New AON or any of its subsidiaries, or their affiliates, on the other hand, other than ordinary course equity compensation grants; (ix) changing the tax classifications of New AON or any of its subsidiaries; (x) increasing or decreasing the authorized number of directors constituting the Board of New AON, or (xi) removing the then-serving New AON chief executive officer from the Board of New AON or approving the proposed replacement of the then-current New AON chief executive officer on Board of New AON.

Each share of New AON Series A Preferred Stock will be convertible at the holder's option into shares of New AON Common Stock at an initial conversion ratio determined by dividing the Accrued Value of such shares of New AON Series A Preferred Stock by the conversion price per share, which will initially be based on the deemed original purchase price per share of each share of New AON Series A Preferred Stock and subject to adjustment in accordance with the terms of the New AON Series A Certificate of Designations. At any time three years after the Closing, if the 30-Day VWAP of the New AON Class A common stock is greater than \$16.00, then New AON may, at its option, elect to cause all (but not less than all) of the outstanding shares of New AON Series A Preferred Stock to be converted into New AON Class A common stock at the conversion ratio then in effect, with such adjustment or cash payment for fractional shares as New AON may elect.

The foregoing description of the New AON Series A Certificate of Designations does not purport to be complete and is qualified in its entirety by the terms and conditions of the New AON Series A Certificate of Designations, which is attached as Exhibit 3.4 hereto, and the terms of which are incorporated herein by reference.

Amended and Restated Sponsor Support Agreement

Contemporaneously with the execution and delivery of the Business Combination Agreement, DTOC and AON entered into an amended and restated sponsor support agreement (the "Sponsor Support Agreement") with Digital Transformation Sponsor LLC (the "Sponsor") and DTOC's Chief Executive Officer (together with the Sponsor, the "Supporting Sponsor Shareholders") pursuant to which the Supporting Sponsor Shareholders agreed not to transfer any shares of New AON Class A Common Stock held by it until the twelve month anniversary of the Closing (the "Sponsor Lock-Up Period"), among other things.

In addition, under the Sponsor Support Agreement, the Sponsor has agreed to subject 2,918,125 of the shares of New AON Common Stock held by it as of the Closing (the "Sponsor Earnout Shares") to the following vesting and forfeiture provisions for the five-year period following the Closing: (i) the Sponsor Earnout Shares will vest when the volume-weighted average price of the New AON Class A Common Stock equals or exceeds \$13.50 per share for any 20 trading days within any 30 trading day period beginning after the Closing and ending 5 years following the Closing, (ii) all of the Sponsor Earnout Shares will be released immediately upon the consummation of a change of control transaction within the 5-year period following the Closing, and (iii) if the Sponsor Earnout Shares are not released pursuant to the foregoing provisions on or before the date that is 5 years after the Closing, then the Sponsor Earnout Shares will be forfeited immediately following such date.

The Sponsor Support Agreement will terminate in its entirety, and be of no further force or effect, upon the earlier to occur of (i) the expiration of the Sponsor Lock-Up Period, and (iii) the written agreement of DTOC, the Sponsor and AON.

Other material terms of the Sponsor Support Agreement are described in the Proxy Statement/Prospectus in the section entitled "*Summary of the Proxy Statement / Prospectus-Related Agreements-Sponsor Support Agreement*" and that information is incorporated herein by reference.

The foregoing description of the Sponsor Support Agreement is not complete and is subject to and qualified in its entirety by reference to the Sponsor Support Agreement, a copy of which is attached hereto as Exhibit 10.1 and the terms of which are incorporated by reference herein.

Amended and Restated Registration Rights Agreement

On September 20, 2023, in connection with the Closing of the Business Combination and as contemplated by the Business Combination Agreement, New AON, the Sponsor and certain key stockholders of New AON entered into the Amended and Restated Registration Rights Agreement (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, New AON agreed to register for resale, pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), certain shares of New AON Class A Common Stock and other equity securities of New AON that are held by the parties thereto from time to time. The parties to the Registration Rights Agreement are entitled to certain demand and piggyback registration rights, in each case subject to certain limitations set forth in the Registration Rights Agreement.

The Registration Rights Agreement amends and restates the registration and stockholder rights agreement that was entered into by DTOC, the Sponsor and the other parties thereto in connection with DTOC's initial public offering. The Registration Rights Agreement will terminate on the earlier of (i) the tenth anniversary of the date of the Registration Rights Agreement and (ii) with respect to the Sponsor or any holder of registrable securities party thereto, the date that such person no longer holds any registrable securities.

Other material terms of the Registration Rights Agreement are described in the Proxy Statement/Prospectus in the section entitled "*Summary of the Proxy Statement / Prospectus-Related Agreements-Amended and Restated Registration Rights Agreement*" and that information is incorporated herein by reference.

The foregoing description of the Registration Rights Agreement is not complete and is subject to and qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached hereto as Exhibit 10.2 and the terms of which are incorporated by reference herein.

Indemnification of Directors and Officers

On September 20, 2023, in connection with the closing of the Business Combination, New AON adopted the Charter. The Charter provides that, to the fullest extent permitted by Delaware law, New AON must indemnify and hold harmless and advance expenses to any of its directors and officers who is involved in any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of New AON or, while serving as a director or officer of New AON, is or was serving at the request of New AON as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity. New AON also is expressly authorized to carry directors' and officers' liability insurance providing indemnification for New AON's directors, officers, and certain employees for some liabilities. Further information about the indemnification of the Company's directors and executive officers is set forth in the Proxy Statement/Prospectus in the section titled "*Description of New AON Securities-Limitation on Liability and Indemnification of Directors and Officers*" and that information is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the "Explanatory Note" above is incorporated into this Item 2.01 by reference.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a shell company, as DTOC was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, New AON, as the successor issuer to DTOC, is providing the information below that would be included in a Form 10 if New AON were to file a Form 10. Please note that the information provided below relates to New AON as the combined company after the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Cautionary Statement Regarding Forward-Looking Statements

The information in this Current Report on Form 8-K includes “forward-looking statements” for purposes of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995, including statements about the anticipated benefits of the Business Combination, and the financial condition, results of operations, earnings outlook and prospects of DTOC, AON and New AON. Investors should note that on April 8, 2021, the staff of the Securities and Exchange Commission (the “SEC”) issued a public statement entitled “SPACs, IPOs and Liability Risk under the Securities Laws,” in which the SEC staff indicated that there is uncertainty as to the availability of the safe harbor in connection with a SPAC merger. In addition, any statements that refer to projections (including EBITDA, adjusted EBITDA, EBITDA margin and revenue projections), forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. Forward-looking statements are typically identified by words such as “plan,” “believe,” “expect,” “anticipate,” “intend,” “outlook,” “estimate,” “forecast,” “project,” “continue,” “could,” “may,” “might,” “possible,” “potential,” “predict,” “should,” “would” and other similar words and expressions, but the absence of these words does not mean that a statement is not forward-looking.

These forward-looking statements are based on various assumptions, whether or not identified herein, and on the current expectations of New AON’s management and are not predictions of actual performance. Because forward-looking statements are predictions, projections and other statements about future events that are based on current expectations and assumptions, whether or not identified in this Current Report on Form 8-K, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. Many factors could cause actual results and condition (financial or otherwise) to differ materially from those indicated in the forward-looking statements, including but not limited to:

- the incurrence of significant costs in connection with and following the Business Combination, including unexpected costs or expenses;
- the sufficiency of our cash, cash equivalents and investments to meet our liquidity needs;
- the diminished amount of working capital we received in the Business Combination due to high levels of redemptions of DTOC Class A common stock;
- potential litigation relating to the Business Combination, and litigation and regulatory proceedings relating to our business;
- uncertain future prospects and rate of growth, including our ability to implement business plans and other expectations;
- the ability to recognize the anticipated benefits of the Business Combination, which may be affected by, among other things, competition, the ability of the combined company to grow and manage growth profitably, maintain key relationships and retain its management and key employees;
- our ability to make continued investments in oncology practices and affiliated care providers;
- risks related to our services being concentrated in certain geographic areas and populations, exposing us to unfavorable changes in local benefit costs, reimbursement rates, competition and economic conditions;
- risks related to the complexity of the reimbursement process for our network practices and our dependence on reimbursement from third-party payors, which could lead to delays, denials, or uncertainties in the reimbursement process;
- risks related to our existing contracts with a limited number of health insurance and medical group companies;
- risks related to our outstanding loans with PNC Bank National Association, which may impact our ability to raise capital;

- our ability to maintain the listing of the New AON Class A Common Stock and New AON Warrants on Nasdaq;
- our securities' potential liquidity and trading, including that the price of our securities may be volatile;
- future issuances, sales or resales of our securities;
- the grant and future exercise of registration rights;
- our ability to secure future financing, if needed, and our ability to repay any current and future indebtedness when due;
- our reliance on a limited number of health insurance and medical group companies for a significant portion of our revenue;
- our ability to maintain an effective system of internal controls over financial reporting and remediate material weaknesses;
- our ability to respond to general economic conditions, including market interest rates; and
- other factors detailed under the section entitled "*Risk Factors*" in the Proxy Statement/Prospectus.

The foregoing list of factors is not exhaustive. You should carefully consider the foregoing factors and the other risks and uncertainties described in the Proxy Statement/Prospectus and other documents filed or that may be filed by New AON from time to time with SEC. These forward-looking statements must not be relied on by any investor as a guarantee, an assurance, a prediction or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and will differ from assumptions. Many actual events and circumstances are beyond the control of New AON. Forward-looking statements speak only as of the date they are made. While New AON may elect to update these forward-looking statements at some point in the future, New AON specifically disclaims any obligation to do so. These forward-looking statements should not be relied upon as representing New AON's assessments as of any date subsequent to the date of this Current Report on Form 8-K. Accordingly, undue reliance should not be placed upon the forward-looking statements.

Business

The business of New AON is described in the Proxy Statement/Prospectus in the section titled "*Information About American Oncology Network, LLC*", and that information is incorporated herein by reference.

Risk Factors

The risk factors related to New AON's business and operations and the Business Combination are set forth in the Proxy Statement/Prospectus in the section titled "*Risk Factors*," and that information is incorporated herein by reference.

Financial Information

The audited financial statements of DTOC as of and for the years ended December 31, 2022 and 2021 included in the Proxy Statement/Prospectus beginning on page F-2 are incorporated herein by reference. The unaudited financial statements of DTOC as of and for the three and six months ended June 30, 2023 filed on DTOC's Quarterly Report Form 10-Q with the SEC on August 10, 2023 are incorporated herein by reference.

The audited financial statements of AON as of and for years ended December 31, 2022, and 2021 are included beginning on page F-48 through F-77 of the Proxy Statement/Prospectus and incorporated herein by reference.

The unaudited pro forma condensed combined financial information of AON and DTOC as of and for the year ended December 31, 2022 and for the six months ended June 30, 2023 is set forth in Exhibit 99.3 and incorporated herein by reference.

Management’s Discussion and Analysis of Financial Condition and Results of Operations

Management’s Discussion and Analysis of Financial Condition and Results of Operations is set forth in Exhibit 99.4.

BENEFICIAL OWNERSHIP OF SECURITIES

The following table sets forth the beneficial ownership of New AON Common Stock immediately following consummation of the Business Combination by:

- each person who is the beneficial owner of more than 5% of New AON Common Stock;
- each person who is an executive officer or director of the Company; and
- all executive officers and directors of the Company, as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security or the right to acquire such power within 60 days.

There were (i) 9,532,354 shares of New AON Class A Common Stock issued and outstanding immediately following the consummation of the Business Combination, which includes the Sponsor Earnout shares of 2,918,125 and (ii) 25,109,551 shares of New AON Class B Common Stock issued and outstanding immediately following the consummation of the Business Combination, which excludes 3,000,245 shares of Class B Warrants.

Unless otherwise indicated, the Company believes that all persons named below have sole voting and investment power with respect to the voting securities indicated in the table below and the corresponding footnotes as being beneficially owned by them.

| Name and Address of Beneficial Owner ⁽¹⁾ | Number of shares of New AON Class A Common Stock | Number of shares of New AON Class B Common Stock | % Voting Power |
|--|---|---|-------------------|
| New AON Directors and Executive Officers | | | |
| Todd Schonherz | - | 869,459 | 2.11% |
| Bradley Prechtel | - | 1,428,065 | 3.46% |
| David Gould | - | - | *0% |
| Stephen “Fred” Divers, MD | - | 63,857 | *0% |
| Shalin Shah, DO | - | 189,300 | *0% |
| Vipul Patel, MD | - | 189,300 | *0% |
| Vance M. Wright-Browne, MD | - | 189,300 | *0% |
| James Stith | - | - | *0% |
| Bradley Fluegel | 25,000 | - | *0% |
| Ravi Sarin | - | - | *0% |
| Erica Mallon | - | - | *0% |
| All Directors and Executive Officers as a group (ten individuals) ⁽²⁾ | 25,000 | 2,929,281 | 7.16% |
| New AON Five Percent Holders: | | | |
| Digital Transformation Sponsor LLC ⁽³⁾ | 14,225,833 | - | 30.01% |
| AEA Growth Funds ⁽⁴⁾ | 6,651,610 | - | 16.11% |

* Less than one percent.

- (1) Unless otherwise noted, the business address of each of the directors and officers will be 14543 Global Parkway, Suite 110, Fort Myers, FL 33913
- (2) Excludes Bradley Precht, AON's former President and Chief Development Officer.
- (3) The shares reported above are held in the name of the Sponsor. The amount disclosed includes 6,113,333 shares issuable upon exercise of private warrants and includes 2,918,125 shares that are subject to earnout. The Sponsor is managed by Kevin Nazemi, and Mr. Nazemi has sole voting and dispositive power with respect to the shares held of record by the Sponsor and thus is the beneficial owner of the shares owned by the Sponsor. The business address of the Sponsor is 10250 Constellation Blvd, Suite 23126 Los Angeles, CA 90067.
- (4) The shares reported as beneficially owned consist of 6,651,610 shares issuable to AEA Growth Equity Fund LP and AEA Growth Equity Fund (Parallel) LP (collectively, the "AEA Growth Funds") upon conversion of the New AON Series A Preferred Stock at an initial conversion price of \$10.00 per share. The general partner of each of the AEA Growth Funds is AEA Growth Equity Partners LP. The general partner of AEA Growth Equity Partners LP is AEA Growth Equity GP LLC. The sole member of AEA Growth Equity GP LLC is AEA Management UGP LLC. Brian Hoesterey is a managing member of AEA Management UGP LLC. As a result, Mr. Hoesterey may be deemed to share voting and dispositive power with respect to the shares held of record by the AEA Growth Funds. Mr. Hoesterey expressly disclaims beneficial ownership of the shares held by the AEA Growth Funds. Mr. Sarin and Mr. Stith, each expected to be a member of the New AON board of directors, are partners of AEA Growth but do not hold voting or dispositive power over the shares held by the AEA Growth Funds. The address for the AEA Growth Funds is 520 Madison Avenue, 40th Floor, New York, New York 10022.

Directors and Executive Officers

Immediately following the consummation of the Business Combination, the following individuals became the directors of New AON: (i) Shalin Shah, (ii) James Stith, (iii) Stephen "Fred" Divers, (iv) Vipul Patel, (v) Vance M. Wright-Browne, (vi) Todd Schnoherz, (vii) Bradley Fluegel, and (viii) Ravi Sarin.

Immediately following the consummation of the Business Combination, the following individuals became the executive officers of New AON: Todd Schonherz, Chief Executive Officer, David H. Gould, Chief Financial Officer, Stephen "Fred" Divers, Chief Medical Officer and Erica Mallon, General Counsel.

Biographical details of the directors and executive officers of New AON are set forth below:

Todd Schonherz has over 30 years of healthcare experience and has served as AON's Chief Executive Officer since 2021 and was previously President & Chief Operating Officer of AON since its inception in 2017 to 2021. Previously, he was Chief Operating Officer of Florida Cancer Specialists (FCS). Prior to his role as COO of FCS in 2011, Mr. Schonherz was Senior Vice President and Chief Information Officer for US Oncology from 1999 to 2010. Mr. Schonherz' consulting and management experience in healthcare information technology includes positions with Datamedic Corporation (acquired by VitalWorks and later Amicas Corporation), Multum Corporation (acquired by Cerner Corporation), and MedE America (acquired by WebMD and later HLTH Corporation). Mr. Schonherz received a bachelor's degree in health policy and administration from Pennsylvania State University. Mr. Schonherz has presented at national industry conferences including multiple Community Oncology Alliance (COA) conferences as well as national and regional information technology conferences.

David H. Gould has served as Chief Financial Officer at AON since September 2020. Prior to joining AON, David was employed at ApolloMD from March 2016 through September 2020, including serving as its Chief Financial Officer from February 2018 to September 2020. Prior to joining ApolloMD, David served approximately 10 years in progressively senior positions and ultimately as the Vice President of Finance and Assistant Treasurer at Cumulus Media. Prior to that, he held financial management roles with both publicly traded and private companies within the healthcare industry. David started his career in public accounting with the national audit firm of Ernst & Young out of their Washington, D.C. office. David holds a Bachelor of Science in Accounting from University of Maryland.

Stephen “Fred” Divers, MD has been AON’s Chief Medical Officer since 2022. In addition, since 2018, Dr. Divers is a Medical Oncologist with Genesis Cancer and Blood Institute, one of the first practices to join the AON network. In July 2020, Mr. Divers was named Advisory Board Chairman. Dr. Divers has provided physician leadership as a member of several national committees and currently serves on the Board of Directors for the Community Oncology Alliance (COA). He attended medical school at the Louisiana State University School of Medicine. He completed his residency at the University of North Carolina and a fellowship at the University of Alabama at Birmingham Cancer Center.

Erica Mallon. Ms. Mallon is a healthcare-specialized attorney with nearly a decade of transactional and regulatory experience and has served as AON’s General Counsel since May 2021. Prior to joining AON, from June 2018 to May 2021, Ms. Mallon served as in-house counsel at Greenway Health, an electronic health record vendor. During her time at Greenway, Ms. Mallon focused on strategic relationships and compliance with healthcare regulations and was instrumental in the negotiation, implementation, and ongoing compliance with Greenway’s Corporate Integrity Agreement. Prior to her tenure at Greenway, Ms. Mallon worked as an attorney in the healthcare group of Carlton Fields, P.A. Ms. Mallon also serves on the board of directors of the Children’s Cancer Center, a Tampa Bay-based non-profit that provides emotional, financial, and educational support to children with cancer or life-threatening blood disorders and their families. Ms. Mallon holds a Bachelor of Science degree in Journalism with dual minors in Business and Political Science from Ohio University and a law degree from Drexel University.

Shalin R. Shah, DO has served as a Director on AON’s Board of Managers since 2022. He has served multiple terms on the Executive Board of Florida Cancer Specialists & Research Institute, LLC and is a former member of its Finance Committee. He is also a board member of the Florida Society of Clinical Oncology (FLASCO) and was the previous Vice President of the Clinical Practice Committee for FLASCO. Dr. Shah actively serves on several other boards in healthcare, technology and education. After graduating from the University of Miami, Dr. Shalin Shah completed his residency at the University of Florida in Jacksonville, Florida, followed by a fellowship in oncology. Dr. Shah is a medical oncologist and hematologist with Florida Cancer Specialists & Research Institute and practices in Tampa, Florida.

James Stith has served as a Director on AON’s Board of Managers since June 2023. Since 2021, Mr. Stith has served as a Partner at AEA Growth, a private equity growth fund managed by AEA Investors LP, a global investment firm. From 2016 to 2021, Mr. Stith served as Co-founder and Partner at ROCA Partners, a growth equity investment firm. Prior to ROCA Partners, Mr. Stith served as an M&A executive at IAC/InterActiveCorp (a publicly-traded portfolio of consumer media and technology companies), a private equity investor at Ares Management (a global alternative investment manager), and an investment banker at Lehman Brothers (a former global financial services firm). Mr. Stith holds a B.A. in Economics and International Relations from the University of Pennsylvania.

Vipul Patel, MD has served as a Director on AON’s Board of Managers since 2019. He is Board certified in medical oncology and hematology. Dr. Patel currently practices medicine in Ocala, Florida at Florida Cancer Specialists & Research Institute, LLC. Dr. Patel previously served as director of clinical trials for an Institutional Review Board in Gaston, N.C. He has been published in several prestigious journals, including the International Journal of Cancer. Prior to entering clinical practice, he served as a teaching assistant in biochemistry and anatomy at Vanderbilt University and as an instructor of hematology/oncology to second-year medical students at Meharry Medical College in Nashville. After receiving his medical degree from Ross University School of Medicine in the West Indies, Dr. Vipul Patel completed a residency in internal medicine at the Medical College of Georgia in Augusta, Georgia and at Vanderbilt University Medical Center in Nashville, Tennessee.

Vance M. Wright-Browne, MD has served as a Director on AON’s Board of Managers since January 2023. Dr. Wright-Browne is Board certified in medical oncology, hematology and internal medicine. Since 2018, Dr. Wright-Browne served on the Board of Trustees for Fawcett Memorial Hospital. Since 2016, Dr. Wright-Browne served on the Board of Directors for the Virginia B. Andes Volunteer Community Clinic. Dr. Wright-Browne graduated from medical school at the University of West Indies located in Kingston, Jamaica and was awarded a Fellowship in Oncology/Hematology at MD Anderson Cancer Center located in Houston, Texas.

Ravi Sarin is Co-Head and Founding Partner of AEA Growth since 2021. Mr. Sarin is also the Founder and Managing Partner of ROCA Partners, a growth equity investment firm focused on tech-enabled services, software and healthcare services companies, which he founded in 2015. Previously, he was a Principal in the Private Equity Group at Ares Management from 2009 to 2015. At Ares, Mr. Sarin helped lead investments in healthcare services among a few other sectors. Prior to Ares, Mr. Sarin was a private equity investor at Bain Capital and a consultant at Bain & Company. Mr. Sarin currently serves on the boards of directors of several companies including AS Software, Bespoke Partners, Cenegenics and Commonwealth Pain & Spine and previously served on the board of directors of a number of companies including Floor & Decor, Jacuzzi Brands, Ob Hospitalist Group, Oceans Healthcare, Riviera Partners, True Blue Car Wash and Unified Women's Healthcare. Mr. Sarin received a B.S. in Electrical Engineering and a M.S. in Management Science & Engineering from Stanford University and an M.B.A. from Harvard Business School.

Bradley Fluegel has served on the DTOC Board since DTOC's IPO. Mr. Fluegel currently advises a number of technology-enabled healthcare companies including Interwell Health Inc., Galileo Inc., Hims Inc., Pager Inc., and VillageMD Chicago, LLC. From October 2012 to January 2018, Mr. Fluegel was the Senior Vice President, Chief Healthcare Commercial Market Development Officer and Chief Strategy and Business Development Officer for Walgreens Company. Prior to Walgreens, Mr. Fluegel served as an executive in residence at Health Evolution Partners from April 2011 to September 2012, Executive Vice President and Chief Strategy and External Affairs Officer of Anthem Inc. from October 2007 to December 2010, Senior Vice President of National Accounts and Vice President of Enterprise Strategy at Aetna Inc. from March 2005 to September 2007, and Chief Executive Officer for Reden & Anders (Optum Consulting) from October 2002 to February 2005. Mr. Fluegel currently serves on the board of directors of MJHS in New York City, Performant Financial Corporation, AdhereHealth LLC and Premera Blue Cross. Mr. Fluegel earned a MPP from Harvard University's Kennedy School of Government and a BBA from the University of Washington. Mr. Fluegel also serves as a lecturer at the University of Pennsylvania's Wharton School of Business.

Director Independence

Information with respect to the independence of the Company's directors is set forth in the Proxy Statement/Prospectus in the section titled "*Management of New AON After the Business Combination-Director Independence*," and that information is incorporated herein by reference.

Committees of the Board of Directors

Information with respect to the composition of the Board immediately after the Closing is set forth in the Proxy Statement/Prospectus in the section titled "*Management of New AON After the Business Combination-Committees of the New AON Board of Directors*", and that information is incorporated herein by reference.

Executive Compensation

A description of the compensation of the named executive officers of AON before the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled "*AON Executive and Director Compensation*," and that information is incorporated herein by reference.

At the Special Meeting, DTOC stockholders approved the New AON 2023 Incentive Equity Plan (the "Incentive Equity Plan"). As a result, the Board is authorized to approve grants of awards under the Incentive Equity Plan to eligible participants, subject to various limitations. The description of the Incentive Equity Plan is set forth in the Proxy Statement/Prospectus in the section entitled "*Proposal No. 6 – The Incentive Equity Plan Proposal*," which is incorporated herein by reference. The description of the Incentive Equity Plan is not complete and is subject to and qualified in its entirety by reference to the Incentive Equity Plan, a copy of which is attached hereto as Exhibit 10.4 and the terms of which are incorporated by reference herein.

Director Compensation

A description of the compensation of the directors of AON before the consummation of the Business Combination is set forth on page 194 of the Proxy Statement/Prospectus in the section titled "*AON Executive and Director Compensation-Non-Employee Director Compensation*," and that information is incorporated herein by reference.

Employment Agreements

A description of the employment agreements that AON entered into with certain Company officers is set forth in the Proxy Statement/Prospectus in the sections titled “*AON Executive and Director Compensation-Employment Agreements*,” and that information is incorporated herein by reference.

Certain Relationships and Related Person Transactions

Certain relationships and related party transactions of DTOC and AON are described in the Proxy Statement/Prospectus in the section titled “*Certain Relationships and Related Person Transactions*,” and that information is incorporated herein by reference.

Legal Proceedings

Reference is made to the disclosure regarding legal proceedings in the section of the Proxy Statement/Prospectus titled “*Information About DTOC-Legal Proceedings*” and “*Information About American Oncology Network, LLC-Legal Proceedings*”, and that information is incorporated herein by reference.

Market Price of and Dividends on the Registrant’s Common Stock and Related Stockholder Matters

The DTOC Class A common stock (“DTOC Class A Common Stock”), DTOC units (“DTOC Units”), each consisting of one share of DTOC Common Stock, one-fourth of one warrant to purchase one share of DTOC Class A Common Stock (“DTOC Warrants”) and DTOC Warrants, were historically listed on Nasdaq under the symbols “*DTOC*,” “*DTOCU*,” and “*DTOCW*,” respectively. On September 21, 2022, the New AON Class A Common Stock and New AON Warrants outstanding upon the Closing began trading on the Nasdaq under the symbols “*AONC*” and “*AONCW*,” respectively. At the Closing, each DTOC Unit separated into its components and, as a result, the DTOC Units are no longer outstanding.

New AON has not paid any cash dividends on the New AON Class A Common Stock or New AON Series A Preferred Stock to date. The New AON Class B Common Stock will not participate in any dividend or other distributions. The Company currently intends to retain its future earnings, if any, to finance the further development and expansion of its business and does not intend to pay cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of the Board and will depend on the Company’s financial condition, results of operations, capital requirements, restrictions contained in future agreements and financing instruments, business prospects and such other factors as its Board deems relevant. As a result, you may not receive any return on an investment in New AON Class A Common Stock or New AON Class B common stock unless you sell such common stock for a price greater than that which you paid for it.

As of the Closing Date, there were approximately 319 record holders of New AON Class A Common Stock and 2 record holders of New AON Warrants. The number of record holders may not be representative of the number of beneficial owners of the New AON Common Stock and New AON Warrants, whose shares are held in street name by banks, brokers and other nominees.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth below under Item 3.02 of this Current Report on Form 8-K concerning the issuance and sale by the Company of certain unregistered securities, which is incorporated herein by reference.

Description of Registrant’s Securities to Be Registered

The description of New AON’s securities is contained in the Proxy Statement/Prospectus in the section titled “*Description of Securities*,” and that information is incorporated herein by reference.

Indemnification of Directors and Officers

The disclosure set forth in Item 1.01 of this Current Report on Form 8-K under the heading “Indemnification of Directors and Officers” is incorporated into this Item 2.01 by reference.

Financial Statements and Exhibits

The information set forth under the section entitled “*Financial Statements*” above and Item 9.01 of this Current Report on Form 8-K are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

Conversion of Outstanding Class B Shares to Class A Shares

Simultaneously with the consummation of the Business Combination, all 75,000 shares of then-outstanding shares of DTOC’s Class B common stock held by DTOC insiders were automatically converted into Class A common stock of New AON on a one-for-one basis, in accordance with the terms of the DTOC’s Class B common stock set forth in DTOC’s Amended and Restated Certificate of Incorporation.

Issuance of New AON Class B Common Stock

Pursuant to the Business Combination, an aggregate of 25,109,551 shares of New AON Class B Common Stock were issued to the former holders of AON LLC’s Class A Units and Class B Units. In addition, an aggregate of 3,000,245 warrants to convert into New AON Class B common stock was issued to one former holder of AON LLC’s Class A-1 Unit. The warrants into New AON Class B common stock are exercisable for no further consideration, and do not expire.

AEA Investment

As previously disclosed, on June 7, 2023, AON and the AON Class C Preferred Investor closed the investment contemplated under the Unit Purchase Agreement dated April 27, 2023, as amended and restated June 7, 2023 between AON and the AON Class C Preferred Investor (the “Unit Purchase Agreement”), pursuant to which the AON Class C Preferred Investor purchased, and AON issued and sold to the AON Class C Preferred Investor, 2,459 AON Class C units for an aggregate purchase price of \$65.0 million (the “Series A Investment”). Such AON Class C units were reclassified into Series A preferred units in connection with the Business Combination, and subsequently, as a part of the First Step, New AON issued 6,651,610 shares of New AON Series A Preferred Stock, which is equal to the number of AON Series A preferred units held by the AON Class C Preferred Investor to AEA Growth.

New AON Series A Preferred Stock are convertible into shares of New AON Class A Common Stock in accordance with the terms of the New AON Series A Certificate of Designation that was adopted by the Board immediately prior to the Closing.

New AON relied on the exemption from registration pursuant to Rule 506(d) of Regulation D for the issuance of the New AON Class B common stock, the warrants to convert into New AON Class B, and the New AON Series A Preferred Stock.

Item 3.03 Material Modification to Rights of Security Holders.

In connection with the Business Combination, on September 20, 2023, the Company filed the Charter with the Delaware Secretary of State, and also adopted amended and restated bylaws (the “Amended and Restated Bylaws”) on September 20, 2023, which replace DTOC’s Amended and Restated Certificate of Incorporation and Bylaws in effect as of such time, respectively.

The material terms of the Charter and the Amended and Restated Bylaws and the general effect upon the rights of holders of New AON Common Stock are discussed in the Proxy Statement/Prospectus in the sections titled “*The Charter Amendment Proposal*” and “*The Advisory Governance Proposal*”, and that information is incorporated herein by reference.

The foregoing description of the Charter and the Amended and Restated Bylaws is not complete and is subject to and qualified in its entirety by reference to the Charter and the Amended and Restated Bylaws, copies of which are attached hereto as Exhibits 3.2 and 3.3 and the terms of which are incorporated by reference herein.

The New AON Class A Common Stock and New AON Warrants are listed for trading on Nasdaq under the symbols “AONC” and “AONCW,” respectively. On the Closing Date, the CUSIP numbers relating to the New AON Common Stock and New AON Warrants changed to 028719102 and 028719110, respectively.

Item 4.01 Changes in Registrant’s Certifying Accountant.

On September 20, 2023, the Board dismissed Marcum LLP (“Marcum”), DTOC’s independent registered public accounting firm prior to the Business Combination, effective immediately.

The report of Marcum on DTOC’s financial statements as of December 31, 2022 and 2021, and for the years then ended, did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainties, audit scope or accounting principles, except that the report contained an explanatory paragraph relating to substantial doubt about the ability of DTOC to continue as a going concern as described in Note 1 to the financial statements.

During the years ended December 31, 2021 and December 31, 2022, and the subsequent period through September 20, 2023, there were no disagreements with Marcum on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Marcum, would have caused it to make a reference to the subject matter of the disagreement in connection with its report covering such period. In addition, no “reportable events,” as defined in Item 304(a)(1)(v) of Regulation S-K, occurred within the period of Marcum’s engagement and the subsequent period through September 20, 2023, except for the control deficiency disclosed as a material weakness in DTOC’s Annual Report on Form 10-K.

The Company provided Marcum with a copy of the foregoing disclosures prior to the filing of this Current Report and requested that Marcum furnish a letter addressed to the SEC, which is attached hereto as Exhibit 16.1, stating whether it agrees with such disclosures, and, if not, stating the respects in which it does not agree.

On September 20, 2023, the audit committee of the Board approved the engagement of PricewaterhouseCoopers LLP (“PwC”) as New AON’s independent registered public accounting firm to audit New AON’s consolidated financial statements for the year ending December 31, 2023. PwC served as the independent registered public accounting firm of AON prior to the Business Combination.

During the years ended December 31, 2021 and December 31, 2022, and the interim period through September 20, 2023, DTOC did not consult with PwC with respect to either (i) the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the Company’s financial statements, and no written report or oral advice was provided to the Company by PwC that PwC concluded was an important factor considered by the Company in reaching a decision as to an accounting, auditing or financial reporting issue; or (ii) any matter that was either the subject of a disagreement, as that term is described in Item 304(a)(1)(iv) of Regulation S-K under the Exchange Act and the related instructions to Item 304 of Regulation S-K under the Exchange Act, or a reportable event, as that term is defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act.

Item 5.01 Changes in Control of Registrant.

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*The Business Combination Proposal*,” which is incorporated herein by reference. Further reference is made to the information contained in the “Explanatory Note” above and Item 2.01 to this Current Report on Form 8-K, which is incorporated herein by reference.

As a result of the completion of the Business Combination, a change of control of DTOC has occurred, and the stockholders of DTOC (including shares held by the founders of DTOC) as of immediately prior to the Closing held 20.56% of the outstanding shares of New AON Common Stock immediately following the Closing.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Following the adoption of the Charter in connection with the Business Combination, the New AON Board was divided into three classes, designated as Class I, Class II and Class III. The directors first elected to Class I will hold office for a term expiring at the first annual meeting of stockholders following the consummation of the Business Combination, which shall include one director elected by the holders of a majority of the New AON Series A Preferred Stock; the directors first elected to Class II will hold office for a term expiring at the second annual meeting of stockholders following the consummation of the Business Combination; and the directors first elected to Class III will hold office for a term expiring at the third annual meeting of stockholders following the consummation of the Business Combination. The Class I directors, whose terms will expire at the annual meeting of stockholders to be held in 2024, will be Shalin Shah and James Stith, the Class II directors, whose terms will expire at the annual meeting of stockholders to be held in 2025, will be Stephen “Fred” Divers, Vipul Patel and Vance M. Wright-Browne and the Class III directors, whose terms will expire at the annual meeting of stockholders to be held in 2026, will be Todd Schnoherz, Bradley Fluegel, and Ravi Sarin.

Immediately following the consummation of the Business Combination, the following individuals became the executive officers of New AON: Todd Schonherz, Chief Executive Officer, David H. Gould, Chief Financial Officer and Stephen “Fred” Divers, Chief Medical Officer.

Concurrently with the consummation of the Business Combination, DTOC’s officers and directors resigned from their respective positions at DTOC.

Following the Closing, the Company’s audit committee consists of Bradley Fluegel, James Stith and Shalin R. Shah, with Mr. Fluegel serving as the chair of the committee. The Board determined that each member of the audit committee qualifies as an independent director under the independence requirements of the Sarbanes-Oxley Act of 2002, as amended, Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the applicable Nasdaq listing requirements, that Mr. Fluegel qualifies as an “audit committee financial expert,” as defined in Item 407(d)(5) of Regulation S-K, and that the members of the committee possess financial sophistication, as defined under the rules of Nasdaq.

Following the Closing, the Company’s compensation committee consists of James Stith, Shalin R. Shah and Vipul Patel, with Mr. Shah serving as chair of the committee. The Board determined that each member of the compensation committee is “independent” as defined under the applicable Nasdaq requirements and SEC rules and regulations.

Following the Closing, the Company’s nominating and governance committee consists of Ravi Sarin, Bradley Fluegel and Vance M. Wright-Browne with Mr. Sarin serving as chair of the committee. The Board determined that each member of the nominating and governance committee is “independent” as defined under the applicable Nasdaq requirements and SEC rules and regulations.

The disclosure set forth in Item 2.01 of this Current Report on Form 8-K under the headings “Executive Compensation,” “Director Compensation,” “Employment Agreements,” “Certain Relationships and Related Person Transactions” and “Indemnification of Directors and Officers” is incorporated in this Item 5.02 by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The disclosure set forth in Item 3.03 of this Current Report regarding the Charter and Amended and Restated Bylaws is incorporated into this Item 5.03 by reference.

Item 5.05 Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.

Effective upon the Closing Date, in connection with the consummation of the Business Combination, the Board adopted a new Code of Business Conduct and Ethics, which is applicable to all employees, officers and directors of the Company (including its Chief Executive Officer and other executive and senior financial officers), which is available on the Company’s website at <https://www.aoncology.com/>. The information on the Company’s website does not constitute part of this Current Report and is not incorporated by reference herein.

Item 5.06 Change in Shell Company Status.

Upon the Closing, the Company ceased to be a shell company. The material terms of the Business Combination are described in the Proxy Statement/Prospectus in the section titled “*The Business Combination Proposal*,” and are incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On September 20, 2023, the Company issued a press release announcing the Closing. The press release is furnished as Exhibit 99.1 to this Current Report.

The information in this Item 7.01, including Exhibit 99.1, is furnished and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to liabilities under that section, and shall not be deemed to be incorporated by reference into the filings of the Company under the Securities Act or the Exchange Act, regardless of any general incorporation language in such filings.

Item 8.01 Other Events

On September 20, 2023, the Board of Directors of New AON authorized a share buyback program for up to \$10 million of New AON's common stock. Under the share buyback program, buybacks may be made from time-to-time in open market and privately negotiated purchases in compliance with Rule 10b-18 under the Exchange Act. This share buyback program does not obligate New AON to acquire any particular amount of common stock and the program may be suspended or discontinued at any time. New AON expects to finance the purchases with existing cash balances.

Item 9.01 Financial Statements and Exhibits.

- (a) Financial statements of businesses acquired

The audited consolidated financial statements of AON as of December 31, 2022 and 2021 are included beginning on page F-48 through F-77 of the Proxy Statement/Prospectus and are incorporated herein by reference.

The unaudited condensed financial statements of AON as of and for the six months ended June 30, 2023 and 2022 and the related notes are included as Exhibit 99.2 and are incorporated herein by reference.

- (b) Pro forma financial information.

The unaudited pro forma condensed combined financial information of AON and DTOC as of and for the year ended December 31, 2022 and for the six months ended June 30, 2023 is set forth in Exhibit 99.3 hereto and is incorporated herein by reference.

| Exhibit No. | Description |
|------------------------|--|
| 2.1† | Third Amended and Restated Business Combination Agreement, dated as of June 14, 2023, by and between Digital Transformation Opportunities Corp., American Oncology Network, LLC, GEF AON Holdings Corp. and DTOC Merger Sub, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed on June 14, 2023). |
| 3.1*† | American Oncology Network, LLC Fourth Amended and Restated Limited Liability Company Agreement |
| 3.2* | Second Amended & Restated Certificate of Incorporation. |
| 3.3* | Amended and Restated Bylaws of New AON. |
| 3.4* | Certificate of Designations of Series A Preferred Stock of American Oncology Network, Inc. |
| 10.1 | Amended and Restated Sponsor Support Agreement dated as of January 6, 2023 by and among AON, New AON and the Sponsor Supporting Shareholders. (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed January 6, 2023) |
| 10.2* | Amended & Restated Registration Rights Agreement dated as of September 20, 2023, by and New AON, the Sponsor and certain key stockholders of New AON. |
| 10.4*+ | New AON 2023 Incentive Equity Plan |
| 16.1* | Letter from Marcum dated September 26, 2023. |
| 21.1* | Subsidiaries of New AON. |
| 99.1* | Press Release dated September 20, 2023. |
| 99.2 | Unaudited Condensed Financial Statements of AON as of and for the six months ended June 30, 2023 and 2022 (incorporated by reference to Exhibit 99.1 of the Company's Current Report on Form 8-K, filed on September 15, 2023). |
| 99.3* | Unaudited Pro Forma Condensed Combined Financial Information |
| 99.4 | Management's Discussion and Analysis of Financial Condition and Results of Operations (incorporated by reference to Exhibit 99.2 of the Company's Current Report on Form 8-K, filed on September 15, 2023) |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document). |

* Filed herewith.

† Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

+ Indicates a management or compensatory plan.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

AMERICAN ONCOLOGY NETWORK, INC.

Date: September 26, 2023

By: /s/ Todd Schonherz

Name: Todd Schonherz

Title: Chief Executive Officer

[Certain information has been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K under the Securities Act of 1933, as amended, because it is both (i) not material and (ii) the type of information that the Registrant treats as confidential. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.]

AMERICAN ONCOLOGY NETWORK, LLC

**FOURTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

Dated as of September 20, 2023

THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH LIMITED LIABILITY COMPANY INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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AMERICAN ONCOLOGY NETWORK, LLC
FOURTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

This FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”) of American Oncology Network, LLC, a Delaware limited liability company (the “**Company**”), dated as of September 20, 2023 (the “**Effective Date**”), is adopted and made by and among the Company, American Oncology Network, Inc., a Delaware corporation (the “**Corporation**”), and the Members (as defined herein), whose adoption is effective following the amendment and restatement of the Third Amended and Restated Limited Liability Company Agreement (as defined herein) by the requisite Members, as further specified in the Recitals.

RECITALS

WHEREAS, unless the context otherwise requires, capitalized terms used herein have the respective meaning ascribed to them in Article I;

WHEREAS, the Company was formed as a limited liability company with the name “American Oncology Network, LLC”, pursuant to and in accordance with the Delaware Act by the filing of the Certificate with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Delaware Act on February 23, 2017;

WHEREAS, prior to the Business Combination, the Company was governed by that certain Third Amended and Restated Limited Liability Company Agreement of the Company, effective as of June 7, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, together with all schedules, exhibits and annexes thereto, the “**Prior LLC Agreement**”), which was adopted by the parties listed on Schedule 1 by way of approval of the requisite Members in accordance with the Third Amended and Restated Limited Liability Company Agreement of the Company (including pursuant to consents and joinders thereto) (collectively, the “**Pre-Business Combination Members**”);

WHEREAS, in connection with the Prior LLC Agreement, GEF AON Holdings Corp. (“**GEF**”) purchased Class C Units (as defined in the Prior LLC Agreement), and the Company used a portion of the proceeds from such purchase to pay in full the accrued preferred return on the Class A Units and Class A-1 Units (each as defined in the Prior LLC Agreement);

WHEREAS, in connection with the Business Combination, among other things, (a) the Company and the Pre-Business Combination Members converted all of the Original Common Units into Common Units and all of the Class C Units (as defined in the Prior LLC Agreement) into Series A Preferred Units (the “**Recapitalization**”) as provided herein, (b) the Company admitted the Corporation as a Member and issued Common Units to the Corporation in exchange for the contribution of the Aggregate Cash Raised and the issuance of Class B Common Stock and Class B Warrants, (c) the Company distributed the Class B Common Stock to the Pre-Business Combination Members (other than GEF) in accordance with the terms of the Business Combination Agreement, (d) the holders of Common Units were given the right, but not the obligation, to exchange the Company Common Units for Class A Common Stock, as provided herein, and (e) the Corporation acquired the stock of GEF in exchange for Series A Preferred Stock pursuant to a reverse subsidiary merger, and then GEF merged upstream with and into the Corporation;

WHEREAS, in connection with the foregoing matters, the Company and the Members desire to continue the Company without dissolution and amend and restate the Prior LLC Agreement in its entirety as of, and immediately prior to, the Effective Date to reflect, among other things, (a) the Recapitalization, (b) the addition of nominees of the Corporation and the Majority Members (as defined herein) as the Managers of the Company and (c) the other rights and obligations of the Members, the Company, the Managers and the Corporation, in each case, as provided and agreed upon in the terms of this Agreement as of the Effective Date, at which time the Prior LLC Agreement shall be superseded entirely by this Agreement and shall be of no further force or effect.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Prior LLC Agreement is hereby amended and restated in its entirety and the Company, the Corporation and the other Members, each intending to be legally bound, each hereby agrees as follows:

ARTICLE I
DEFINITIONS

The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

“**1934 Act**” means the Securities Exchange Act of 1934, as amended.

“**Additional Member**” has the meaning set forth in Section 12.02.

“**Adjusted Capital Account Deficit**” means, with respect to the Capital Account of any Member as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Member’s Capital Account balance shall be:

(a) reduced for any items described in Treasury Regulations Section 1.704- 1(b)(2)(ii)(d)(4), (5), and (6); and

(b) increased for any amount such Member is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(l) and 1.704-2(i) (relating to minimum gain).

“**Admission Date**” has the meaning set forth in Section 10.06.

“**Affiliate**” (and, with a correlative meaning, “**Affiliated**”) means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement).

“**Aggregate Cash Raised**” has the meaning set forth in the Business Combination Agreement.

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

“**Assignee**” means a Person to whom a Unit has been transferred but who has not become a Member pursuant to Article XII.

“**Assumed Tax Liability**” means, with respect to any Member, an amount equal to the excess of (a) the product of (i) the Distribution Tax Rate multiplied by (ii) the estimated or actual cumulative taxable income or gain of the Company (excluding any taxable income or gain of the Company allocated to the Series A Preferred Units), as determined for U.S. federal income tax purposes, allocated to such Member for full or partial Taxable Years commencing on or after January 1, 2023, less prior losses of the Company (excluding any losses of the Company allocated to the Series A Preferred Units), as determined for U.S. federal income tax purposes, allocated to such Member for full or partial Taxable Years commencing on or after January 1, 2023, in each case, as determined by the Board of Managers and to the extent such prior losses are available to reduce such income or gain, over (b) the cumulative Tax Distributions made to such Member after the closing date of the Business Combination pursuant to Section 4.01(b)(i)(B).

“**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Closing Date, directly or indirectly managed or advised by a Member’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of a Member or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with a Member or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company’s Class B Common Stock or Common Units could be aggregated with a Member’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively a Member and all other Attribution Parties to the Maximum Percentage.

“**Base Rate**” means, on any date, a variable rate per annum equal to the rate of interest most recently published by *The Wall Street Journal* as the “prime rate” at large U.S. money center banks.

“**Beneficial Owner**” means, with respect to a security, a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares:

- (a) voting power, which includes the power to vote, or to direct the voting of, such security; or
- (b) investment power, which includes the power to dispose of, or to direct the disposition of, such security.

The terms “**Beneficially Own**” and “**Beneficial Ownership**” shall have correlative meanings.

“Black-Out Period” means any “black-out” or similar period under the Corporation’s policies covering trading in the Corporation’s securities to which the applicable Redeeming Member is subject (or will be subject at such time as it owns Class A Common Stock), which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement.

“Board” or **“Board of Managers”** has the meaning set forth in Section 6.01.

“Book Value” means, with respect to any property of the Company, the Company’s adjusted basis for U.S. federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted (as determined by the Board of Managers) by Treasury Regulations Section 1.704-1(b)(2) (iv), except that, in the case of any property contributed to the Company, the Book Value of such property shall initially equal the Fair Market Value of such property at the time of such contribution.

“Business Combination” has the meaning set forth in the Business Combination Agreement.

“Business Combination Agreement” means that certain Business Combination Agreement dated as of October 5, 2022, by and among the Corporation, the Company, and certain other parties thereto, as amended and restated as of June 14, 2023.

“Business Day” means any day other than a Saturday, Sunday or day on which banks located in New York City, New York are authorized or required by Law to close.

“Capital Account” means the capital account maintained for a Member in accordance with Section 5.01.

“Capital Contribution” means, with respect to any Member, the amount of any cash, cash equivalents, promissory obligations or the Fair Market Value of other property that such Member (or such Member’s predecessor) contributes (or is deemed to contribute) to the Company pursuant to Article III hereof, net of any liabilities assumed by the Company from such Member in connection with such contribution or to which the contributed property is subject.

“Cash Settlement” means immediately available funds in U.S. dollars in an amount equal to the Redeemed Units Equivalent.

“Certificate” means the Company’s Certificate of Formation as filed with the Secretary of State of the State of Delaware, as amended or amended and restated from time to time.

“Change of Control” means the occurrence of any of the following events:

(a) any “person” or “group” (within the meaning of Sections 13(d) of the Exchange Act (excluding any “person” or “group” who, on the Closing Date, is the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities)) becomes the Beneficial Owner of securities of the Corporation representing more than 50% of the combined voting power of the Corporation’s then outstanding voting securities;

(b) (i) the shareholders of the Corporation approve a plan of complete liquidation or dissolution of Corporation or (ii) there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation's assets, other than such sale or other disposition by the Corporation of all or substantially all of the Corporation's assets to an entity at least 50% of the combined voting power of the voting securities of which are owned by shareholders of the Corporation in substantially the same proportions as their ownership of the Corporation immediately prior to such sale or other disposition; or

(c) there is consummated a merger or consolidation of the Corporation with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (i) the Corporate Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (ii) all of the Persons who were the respective Beneficial Owners of the voting securities of the Corporation immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation; or

(d) the following individuals cease for any reason to constitute a majority of the number of directors of the Corporation then serving: individuals who were directors of the Corporation on the Closing Date (for greater certainty, after giving effect to the changes contemplated by the Business Combination Agreement) or any new director whose appointment or election to the Corporate Board or nomination for election by the Corporation's shareholders was approved or recommended by a vote of at least two-thirds of the directors then still in office who either were directors of the Corporation on the Closing Date or whose appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (d).

Notwithstanding the foregoing, a "**Change of Control**" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock and Class B Common Stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions.

"**Change of Control Date**" has the meaning set forth in Section 10.09(a).

"**Change of Control Transaction**" means any Change of Control that is approved by the Corporate Board prior to such Change of Control.

“Class A Common Stock” means, as applicable, (a) the shares of Class A common stock, par value \$0.0001 per share, of the Corporation or (b) following any consolidation, merger, reclassification or other similar event involving the Corporation, any shares or other securities of the Corporation or any other Person or cash or other property that become payable in consideration for the Class A common stock, \$0.0001 par value per share, of the Corporation or into which the Class A common stock, \$0.0001 par value per share, of the Corporation is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Class B Common Stock” means, as applicable, (a) the shares of Class B Common Stock, par value \$0.0001 per share, of the Corporation or (b) following any consolidation, merger, reclassification or other similar event involving the Corporation, any shares or other securities of the Corporation or any other Person or cash or other property that become payable in consideration for the Class B common stock, \$0.0001 par value per share, of the Corporation or into which the Class B common stock, \$0.0001 par value per share, of the Corporation is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Class B Warrants” means warrants issued by the Corporation in connection with the Business Combination to purchase shares of Class B Common Stock.

“Closing Date” means the date on which the Business Combination is consummated.

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

“Common Unit” means a Unit designated as a “Common Unit” and having the rights and obligations specified with respect to the Common Units in this Agreement.

“Common Unit Redemption Price” means, with respect to any Redemption, the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the Stock Exchange, or any other exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by Bloomberg, L.P., or its successor, for each of the 5 consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the applicable Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on the Stock Exchange or any other securities exchange or automated or electronic quotation system as of any particular Redemption Date, then the Corporation (through a majority of its directors who are disinterested) shall determine the Common Unit Redemption Price in good faith.

“Company” has the meaning set forth in the preamble to this Agreement.

“Confidential Information” has the meaning set forth in [Section 15.02\(a\)](#).

“Corporate Board” means the board of directors of the Corporation.

“Corporate Equity Incentive Plan” means, the AON 2023 Equity Incentive Plan, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Corporation” has the meaning set forth in the recitals to this Agreement, together with its successors and assigns.

“**Corresponding Rights**” means any rights issued with respect to a share of Class A Common Stock or Class B Common Stock pursuant to a “poison pill” or similar stockholder rights plan approved by the Corporate Board.

“**Credit Agreements**” means any promissory note, mortgage, loan agreement, indenture or similar instrument or agreement to which the Company or any of its Subsidiaries is or becomes a borrower, as such instruments or agreements may be amended, restated, supplemented or otherwise modified from time to time and including any one or more refinancing or replacements thereof, in whole or in part, with any other debt facility or debt obligation, for as long as the payee or creditor to whom the Company or any of its Subsidiaries owes such obligation is not an Affiliate of the Company.

“**Delaware Act**” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, *et seq.*, as it may be amended from time to time, and any successor thereto.

“**Direct Exchange**” has the meaning set forth in [Section 11.03\(a\)](#).

“**Distributable Cash**” means, as of any relevant date on which a determination is being made by the Board of Managers regarding a potential distribution pursuant to [Section 4.01\(a\)](#), the amount of cash that could be distributed by the Company for such purposes in accordance with any Credit Agreements (and without otherwise violating any applicable provisions of any Credit Agreements).

“**Distribution**” (and, with a correlative meaning, “**Distribute**”) means each distribution made by the Company to a Member with respect to such Member’s Units, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; *provided however* that, none of the following shall be a Distribution: (a) any recapitalization that does not result in the distribution of cash or property to Members or any exchange of securities of the Company, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units or (b) any other payment made by the Company to a Member that is not properly treated as a “distribution” for purposes of Sections 731, 732, or 733 or other applicable provisions of the Code.

“**Distribution Tax Rate**” means, with respect to a Taxable Year or portion thereof, the higher of the then applicable (a) sum of the highest marginal effective U.S. federal individual income tax rate and highest combined marginal effective U.S. state and local individual income tax rate for an individual as reasonably determined by the Board of Managers and (b) sum of the highest marginal effective U.S. federal corporate income tax rate and the highest combined marginal effective U.S. state and local corporate income tax of any state in which the Company does business, in each case, taking into account the character of the relevant tax items (*e.g.*, ordinary or capital) and the deductibility of state and local income taxes for federal income tax purposes (but only to the extent such taxes are deductible under the Code), as reasonably determined by the Board of Managers.

“**Effective Date**” has the meaning set forth in the preamble to this Agreement.

“**Electing Redeeming Member**” means each of those certain Members, in its discretion, that has agreed in writing with the Company for the provisions of Section 11.01(a)(iv) to apply.

“**Election Notice**” has the meaning set forth in Section 11.01(b).

“**Equity Plan**” means any stock or equity purchase plan, restricted stock or equity plan or other similar equity compensation plan now or hereafter adopted by the Company or the Corporation, including the Corporate Equity Incentive Plans.

“**Equity Securities**” means (a) Units or other equity interests in the Company or any Subsidiary of the Company (including other classes or groups thereof having such relative rights, powers and duties as may from time to time be established by the Board of Managers pursuant to the provisions of this Agreement, including rights, powers or duties senior to existing classes and groups of Units and other equity interests in the Company or any Subsidiary of the Company), (b) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other equity interests in the Company or any Subsidiary of the Company, and (c) warrants, options or other rights to purchase or otherwise acquire Units or other equity interests in the Company or any Subsidiary of the Company.

“**Event of Withdrawal**” means the bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company. “Event of Withdrawal” shall not include an event that (a) terminates the existence of a Member for income tax purposes (including (i) a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, (ii) a sale of assets by, or liquidation of, a Member pursuant to an election under Sections 336 or 338 of the Code, or (iii) merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member) but that (b) does not terminate the existence of such Member under applicable state law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Units of such trust that is a Member).

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and any applicable rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

“**Fair Market Value**” of a specific asset of the Company will mean the amount which the Company would receive in an all-cash sale of such asset in an arms-length transaction with a willing unaffiliated third party, with neither party having any compulsion to buy or sell, consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), as such amount is determined by the Board of Managers (or, if pursuant to Section 14.02, the Liquidators) in its good faith judgment using all factors, information and data it deems to be pertinent.

“**Family Group**” means (a) in the case of a Member or LLC Employee who is an individual, such individual’s spouse, parents and descendants (whether natural or adopted) and any trust or estate planning vehicle or entity solely for the benefit of such individual or the individual’s spouse, parents, descendants or other relatives, and (b) in the case of a Member or LLC Employee that is a trust, the beneficiary of such trust.

“Fiscal Period” means any interim accounting period within a Taxable Year established by the Board of Managers and which is permitted or required by Section 706 of the Code.

“Fiscal Year” means the Company’s annual accounting period established pursuant to Section 8.02.

“Governmental Entity” means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision of clause (a) or (b) of this definition, including, but not limited to, any county, municipal or other local subdivision of the foregoing, or (d) any agency, arbitrator or arbitral body, authority, board, body, bureau, commission, court, department, entity, instrumentality, organization or tribunal exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of clauses (a), (b) or (c) of this definition.

“Group” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

“Imputed Underpayment Amount” means (a) any “imputed underpayment” within the meaning of Section 6225 of the Code (or any corresponding or similar provision of state, local or foreign tax law) paid (or payable) by the Company as a result of any adjustment by the IRS with respect to any Company item of income, gain, loss, deduction, or credit of the Company (including, without limitation, any “partnership-related item” within the meaning of Section 6241(2) of the Code (or any corresponding or similar provision of state, local or foreign tax law)), including any interest, penalties or additions to tax with respect to any such adjustment, (b) any amount not described in clause (a) (including any interest, penalties or additions to tax with respect to such amounts) paid (or payable) by the Company as a result of the application of Sections 6221 through 6241 of the Code (or any corresponding or similar provision of state, local or foreign tax law), and/or (c) any amount paid (or payable) by any entity treated as a partnership for U.S. federal income tax purposes in which the Company holds (or has held) a direct or indirect interest other than through entities treated as corporations for U.S. federal income tax purposes if the Company bears the economic burden of such amounts, whether by law or agreement, as a result of the application of Sections 6221 through 6241 of the Code (including for the avoidance of doubt Section 6226(b) of the Code or any corresponding or similar provision of state, local or foreign tax law), including any interest, penalties or additions to tax with respect to such amounts.

“Indemnified Person” has the meaning set forth in Section 7.04(a).

“Investment Company Act” means the U.S. Investment Company Act of 1940, as amended from time to time.

“IRS” means the Internal Revenue Service.

“Joinder” means a joinder to this Agreement, in form and substance substantially similar to Exhibit A to this Agreement.

“**Law**” means all laws, statutes, ordinances, rules and regulations of any Governmental Entity.

“**Liquidating Event**” has the meaning set forth in Section 14.01.

“**Liquidator**” has the meaning set forth in Section 14.02.

“**LLC Employee**” means an employee of, or other service provider (including any management member whether or not treated as an employee for the purposes of U.S. federal income tax) to, the Company or any of its Subsidiaries, in each case acting in such capacity.

“**Losses**” means items of loss or deduction of the Company determined according to Section 5.01(b).

“**Majority Members**” has the meaning set forth in Section 6.01.

“**Managers**” has the meaning set forth in Section 6.01.

“**Market Price**” means, with respect to a share of Class A Common Stock as of a specified date, the last sale price per share of Class A Common Stock, regular way, or if no such sale took place on such day, the average of the closing bid and asked prices per share of Class A Common Stock, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Stock Exchange or, if the Class A Common Stock is not listed or admitted to trading on the Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Class A Common Stock is listed or admitted to trading or, if the Class A Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if the Class A Common Stock is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in shares of Class A Common Stock selected by the Corporate Board or, in the event that no trading price is available for the shares of Class A Common Stock, the fair market value of a share of Class A Common Stock, as determined in good faith by the Corporate Board.

“**Member**” means, as of any date of determination, (a) each of the members named on the Schedule of Members and (b) any Person admitted to the Company as a Substituted Member or Additional Member in accordance with Article XII but in each case only so long as such Person is shown on the Company’s books and records as the owner of one or more Units, each in its capacity as a member of the Company.

“**Member Minimum Gain**” means minimum gain attributable to Member Nonrecourse Debt determined in accordance with Treasury Regulations Section 1.704-2(i).

“Member Nonrecourse Debt” has the meaning set forth for the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

“Minimum Gain” means “partnership minimum gain” determined pursuant to Treasury Regulations Section 1.704-2(d).

“Net Loss” means, with respect to a Taxable Year, the excess if any, of the aggregate amount of Losses for such Taxable Year over the aggregate amount of Profits for such Taxable Year (excluding Profits and Losses specially allocated pursuant to [Section 5.03](#) and [Section 5.04](#)) or, to the extent required, items thereof.

“Net Profit” means, with respect to a Taxable Year, the excess, if any, of the aggregate amount of Profits for such Taxable Year over the aggregate amount of Losses for such Taxable Year (excluding Profits and Losses specially allocated pursuant to [Section 5.03](#) and [Section 5.04](#)) or, to the extent required, items thereof.

“Officer” has the meaning set forth in [Section 6.02\(b\)](#).

“Original Common Units” means, collectively, (a) all of the issued and outstanding Class A Units of the Company, (b) all of the issued and outstanding Class A-1 Units of the Company and (c) all of the issued and outstanding Class B Units of the Company, in each case, as defined in the Prior LLC Agreement.

“Other Agreements” has the meaning set forth in [Section 10.04](#).

“Partnership Representative” has the meaning set forth in [Section 9.03](#).

“Percentage Interest” means, with respect to a Member at a particular time, such Member’s percentage interest in the Company determined by dividing the number of such Member’s Common Units (or, in the case of Series A Preferred Units, the number of Common Units into which the Series A Preferred Units may convert at the then-effective conversion ratio for a Series A Preferred Conversion), by the total number of Common Units of all Members at such time (including the number of Common Units issuable at the then-effective conversion ratio in connection with a Series A Preferred Conversion).

“Permitted Transfer” has the meaning set forth in [Section 10.02](#).

“Permitted Transferee” has the meaning set forth in [Section 10.02](#).

“Person” means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other organization or entity, whether or not a legal entity.

“Pre-Business Combination Members” has the meaning set forth in the recitals to this Agreement.

“Preferred Unit Related Taxes” has the meaning set forth in [Section 4.01\(b\)\(i\)\(A\)](#).

“**Prior LLC Agreement**” has the meaning set forth in the recitals to this Agreement.

“**Pro rata**”, “**pro rata portion**”, “**according to their interests**”, “**ratably**”, “**proportionately**”, “**proportional**”, “**in proportion to**”, “**based on the number of Units held**”, “**based upon the percentage of Units held**”, “**based upon the number of Units outstanding**” and other terms with similar meanings, when used in the context of a number of Units of the Company relative to other Units, means as amongst an individual class of Units, pro rata based upon the number of such Units within such class of Units.

“**Profits**” means items of income and gain of the Company determined according to [Section 5.01\(b\)](#).

“**Pubco Offer**” has the meaning set forth in [Section 10.09\(b\)](#).

“**Quarterly Redemption Date**” means, for each quarter beginning with the quarter ended September 30, 2023 (or the first fiscal quarter following the Closing Date) the latest to occur of either: (a) the second Business Day after the date on which Corporation makes a public news release of its quarterly earnings for the prior quarter, (b) the first day of each quarter on which directors and executive officers of Corporation are permitted to trade under the applicable policies of Corporation related to trading by directors and executive officers, or (c) such other date as the Board of Managers shall determine in its sole discretion. The Board of Managers will deliver notice of the Quarterly Redemption Date to each Member (other than Corporation) at least seventy-five (75) days prior to each Quarterly Redemption Date.

“**Quarterly Tax Distribution**” has the meaning set forth in [Section 4.01\(b\)\(ii\)](#).

“**Recapitalization**” has the meaning set forth in the recitals to this Agreement.

“**Redeemed Units**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Redeemed Units Equivalent**” means the product of (a) the applicable number of Redeemed Units, *multiplied by* (b) the Common Unit Redemption Price.

“**Redeeming Member**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Redemption**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Redemption Date**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Redemption Notice**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Redemption Right**” has the meaning set forth in [Section 11.01\(a\)](#).

“**Registration Rights Agreement**” means that certain Registration Rights Agreement, dated as of the Effective Date (as may be amended from time to time in accordance with its terms), by and among the Corporation, Digital Transformation Sponsor LLC, certain Members as of the Effective Date and certain other Persons whose signatures are affixed thereto (together with any joinder thereto from time to time by any successor or assign to any party to such agreement).

“**Restricted Taxable Year**” means any Taxable Year during which the Board of Managers determines the Company does not satisfy the private placement safe harbor of Treasury Regulations Section 1.7704-1(h).

“**Retraction Notice**” has the meaning set forth in [Section 11.01\(c\)](#).

“**Revised Partnership Audit Provisions**” means Section 1101 of Title XI (Revenue Provisions Related to Tax Compliance) of the Bipartisan Budget Act of 2015, H.R. 1314, Public Law Number 114-74.

“**Schedule of Members**” has the meaning set forth in [Section 3.01\(a\)](#).

“**SEC**” means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

“**Semi-Annual Distribution Date**” shall mean the June 30 and December 31 of each year.

“**Series A Liquidation Value**” has the meaning set forth in [Section 14.02\(c\)\(i\)](#).

“**Series A Per Unit Capital Amount**” means, as of any date of determination, the Capital Account, stated on a per Series A Preferred Unit basis, underlying Series A Preferred Units held by a Member.

“**Series A Preferred Accrued Distributions**” has the meaning set forth in [Section 4.01\(a\)\(i\)](#).

“**Series A Preferred Accrued Value**” means with respect to each Series A Preferred Unit as of the determination date, the sum, subject to appropriate adjustment in the event of any unit distribution, unit split, combination or other similar recapitalization with respect to the Series A Preferred Unit, of (i) the Series A Preferred Stated Value, plus (ii) the aggregate amount of any Series A Preferred Accrued Distributions on such Series A Preferred Unit as of such date.

“**Series A Preferred Annual Rate**” means the rate per annum of 8.0%.

“**Series A Preferred Applicable Percentage**” means a percentage equal to (a) one hundred twenty five percent (125%) if dissolution, liquidation, or winding-up occurs on or prior to June 7, 2024, (b) one hundred twenty percent (120%) if a dissolution, liquidation, or winding-up occurs after June 7, 2024, but on or prior to June 7, 2025, (c) one hundred fifteen percent (115%) if a dissolution, liquidation, or winding-up occurs after June 7, 2025, but on or prior to June 7, 2026, (d) one hundred ten percent (110%) if a dissolution, liquidation, or winding-up occurs after June 7, 2026, but on or prior to June 7, 2027, (e) one hundred five percent (105%) if a dissolution, liquidation, or winding-up occurs after June 7, 2027, but on or prior to June 7, 2028, (f) one hundred percent (100%) if a dissolution, liquidation, or winding-up occurs after June 7, 2029.

“**Series A Preferred Cash Distribution**” has the meaning set forth in Section 4.01(a)(i).

“**Series A Preferred Conversion**” has the meaning set forth in Section 3.12(c).

“**Series A Preferred Distribution Period**” shall mean, with respect to the first “Series A Preferred Distribution Period,” the period from and including the first date on which any Series A Preferred Unit is issued, to and including the first Semi-Annual Distribution Date, and with respect to each subsequent “Series A Preferred Distribution Period,” the period from but excluding a Semi-Annual Distribution Date to and including the next succeeding Semi-Annual Distribution Date or other date as of which accrued dividends are to be calculated.

“**Series A Preferred Stated Value**” means \$10.00.

“**Series A Preferred Stock**” means the shares of Series A Preferred Stock, par value \$0.0001 per share, of the Corporation.

“**Series A Preferred Units**” means the membership interests of the Company designated as “Series A Preferred Units” and having the relative rights, preferences, privileges, limitations and qualifications set forth in this Agreement.

“**Share Settlement**” means a number of shares of Class A Common Stock (together with any Corresponding Rights) equal to the number of Redeemed Units.

“**Stock Exchange**” means the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market, as applicable, or such other principal United States securities exchange on which the Class A Common Stock is listed or admitted to trading.

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, references to a “Subsidiary” of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“**Substituted Member**” means a Person that is admitted as a Member to the Company pursuant to Section 12.01.

“**Tax Distributions**” has the meaning set forth in Section 4.01(b)(i).

“**Taxable Year**” means the Company’s accounting period for U.S. federal income tax purposes determined pursuant to Section 9.02.

“**Trading Day**” means a day on which the Stock Exchange is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“**Transfer**” (and, with a correlative meaning, “**Transferring**” and “**Transferred**”) means any sale, transfer, assignment, redemption, pledge, encumbrance or other disposition of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of Law) (a) any interest (legal or beneficial) in any Equity Securities or (b) any equity or other interest (legal or beneficial) in any Member if substantially all of the assets of such Member consist solely of Units.

“**Treasury Regulations**” means the final, temporary and (to the extent they can be relied upon) proposed regulations under the Code, as promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period. Such term shall be deemed to include any future amendments to such regulations and any corresponding provisions of succeeding regulations.

“**Unit**” means the fractional interest of a Member in Profits, Losses and Distributions of the Company, and otherwise having the rights and obligations specified with respect to “Units” in this Agreement; *provided however* that, any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement applicable to such class or group of Units.

“**Value**” means, for any Equity Plan, the Market Price for the Trading Day immediately preceding the Vesting Date.

“**Vesting Date**” has the meaning set forth in Section 3.10(a)(ii).

ARTICLE II ORGANIZATIONAL MATTERS

Section 2.01 Formation of Company. The Company has been organized as a Delaware limited liability company by the execution and filing of the Certificate by an authorized person under and pursuant to the Act. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control. This Agreement amends, restates and supersedes the Third Amended and Restated LLC Agreement in its entirety, and from and after the Effective Date (i) the Third Amended and Restated LLC Agreement shall cease to have any further force and effect and (ii) any Member that has not executed this Agreement shall nonetheless be bound hereby by virtue of the right of the Board and the Company’s Members to amend the Third Amended and Restated LLC Agreement pursuant to the terms thereof.

Section 2.02 Name. The name of the Company is AMERICAN ONCOLOGY NETWORK, LLC, the name specified in the Certificate filed with the Secretary of State of the State of Delaware on February 23, 2017. All Company business shall be conducted in that name or in such other names that comply with applicable law as the Board may select from time to time.

Section 2.03 Purpose; Powers. The primary business and purpose of the Company shall be to engage in such activities as are permitted under the Delaware Act. The Company shall have the power and authority to take (directly or indirectly through its Subsidiaries) any and all actions and engage in any and all activities necessary, appropriate, desirable, advisable, ancillary or incidental to accomplish the foregoing purpose.

Section 2.04 Principal Office; Registered Office. The principal office of the Company shall be located at such place or places as the Board of Managers may from time to time designate, each of which may be within or outside the State of Delaware. The Company may have such other offices as the Board of Managers may designate from time to time. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Board of Managers may designate from time to time in the manner provided by law.

Section 2.05 Term. The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in perpetuity unless dissolved in accordance with the provisions of Article XIV.

Section 2.06 No State-Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the following sentence of this Section 2.06, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for U.S. federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment. Notwithstanding anything to the contrary set forth in this Section 2.06, this Section 2.06 shall not prevent the Company from entering into or consummating any transaction which constitutes a Change of Control to the extent such transaction is duly authorized by the Board of Managers and Corporate Board in accordance with this Agreement.

ARTICLE III MEMBERS; UNITS; CAPITALIZATION

Section 3.01 Members.

(a) The Company shall maintain a schedule setting forth: (i) the name and address of each Member and (ii) the aggregate number of outstanding Units and the number and class of Units held by each Member (such schedule, the “**Schedule of Members**”). The applicable Schedule of Members in effect as of the Effective Date and after giving effect to the Recapitalization is set forth as Schedule 2 to this Agreement. The Company shall also maintain a record of (1) the aggregate amount of cash Capital Contributions that has been made by the Members with respect to their Units and (2) the Fair Market Value of any property other than cash contributed by the Members with respect to their Units (including, if applicable, a description and the amount of any liability assumed by the Company or to which contributed property is subject) in its books and records. The Schedule of Members may be updated by the Board of Managers in the Company’s books and records from time to time, and as so updated, it shall be the definitive record of ownership of each Unit of the Company and all relevant information with respect to each Member. The Company shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Units for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Units on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Act.

(b) No Member shall be required or, except as approved by the Board of Managers and in accordance with the other provisions of this Agreement, permitted to (i) loan any money or property to the Company, (ii) borrow any money or property from the Company or (iii) make any additional Capital Contributions.

(c) Role of Members:

(i) Meetings of the Members may be called upon the written request of the Board or Members holding at least 50% of the outstanding Units. Such request shall state the location of the meeting and the nature of the business to be transacted at the meeting. Written notice of any such meeting shall be given to all Members not less than two Business Days and not more than 30 days prior to the date of such meeting. Members may vote in person, by proxy or by telephone at any meeting of the Members and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 3.01(c). Except as otherwise expressly provided in this Agreement, the affirmative vote of the Members holding a majority of the outstanding Units shall constitute the act of the Members. In any vote or consent of the Members where the Members holding Series A Preferred Units are entitled to vote, the holders of Series A Preferred Units will vote on an as converted to Common Unit basis assuming such Series A Preferred Units are converted pursuant to the Series A Preferred Conversion.

(ii) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by such Member or its attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.

(iii) Each meeting of Members shall be conducted by the Board or such individual Person as the Board deems appropriate.

(iv) Any action required or permitted to be taken by the Members may be taken without a meeting if the requisite Members whose approval is necessary consent thereto in writing (including the election of the Managers pursuant to Section 6.01). Any consent or approval of the Members required or permitted by this Agreement to be “written” may also be made by the use of electronic transmission.

Section 3.02 Units.

(a) Interests in the Company shall be represented by Units, or such other securities of the Company, in each case as the Board of Managers may establish in its discretion in accordance with the terms and subject to the restrictions hereof. At the Effective Date, the Units will be comprised of (i) a class of Common Units and (ii) a class of Series A Preferred Units.

(b) Each Common Unit shall be identical to all other Common Units in all respects and shall entitle the holder thereof to the rights, interests, preferences and privileges of a holder of a Common Unit as set forth in this Agreement.

(c) Each Series A Preferred Unit shall be identical to all other Series A Preferred Units in all respects and shall entitle the holder thereof to the rights, interests, preferences and privileges of a holder of a Series A Preferred Unit as set forth in this Agreement.

(d) Subject to Section 3.04(a), the Board of Managers may (i) issue additional Common Units at any time in its sole discretion and (ii) create one or more additional classes or series of Units or preferred Units solely to the extent such new class or series of Units or preferred Units are substantially economically equivalent to a class of common or other stock of the Corporation or class or series of preferred stock of the Corporation, respectively; *provided that*, as long as there are any Members (other than the Corporation and its Subsidiaries), (A) no such new class or series of Units may deprive such Members of, or dilute or reduce, the allocations and distributions they would have received, and the other rights and benefits to which they would have been entitled, in respect of their Units if such new class or series of Units had not been created and (B) no such new class or series of Units may be issued, in each case, except to the extent (and solely to the extent) the Company actually receives cash in an aggregate amount, or other property with a Fair Market Value in an aggregate amount, equal to the aggregate distributions that would be made in respect of such new class or series of Units if the Company were liquidated immediately after the issuance of such new class or series of Units, in the case of each of clauses (A) and (B), other than in connection with the creation and issuance of one or more classes or series of Units issued in accordance with the Equity Plan.

(e) Subject to Section 15.03(b)(ii) and 15.03(b)(iii), the Board of Managers may amend this Agreement in connection with the creation and issuance of such classes or series of Units, pursuant to Section 3.02(d), Section 3.04(a) or Section 3.10.

Section 3.03 Recapitalization; the Business Combination. In order to effect the Recapitalization, the number of Original Common Units and Class C Units (as defined in the Prior LLC Agreement) that were issued and outstanding and held by the Pre-Business Combination Members prior to the Effective Date as set forth opposite the respective Pre-Business Combination Member in Schedule 1 are hereby converted, as of the Effective Date, taking into account and adjusted for any distribution considered an advance to a Pre-Business Combination Member that remains outstanding as of the Effective Date and giving effect to such conversion and the other transactions related to the Recapitalization, into the number and class of Units set forth opposite the name of the respective Member on the Schedule of Members attached hereto as Schedule 2; *provided that*, for the avoidance of doubt, the number of Common Units and Series A Preferred Units set forth on Schedule 2 shall include the effects of the Business Combination and the other transactions contemplated by the Business Combination Agreement. Such Common Units and Series A Preferred Units set forth on Schedule 2 are hereby issued and outstanding as of the Effective Date and the holders of such Units are Members hereunder.

Section 3.04 Authorization and Issuance of Additional Units.

(a) Except as otherwise determined by the Board of Managers in connection with a contribution of cash or other assets by the Corporation to the Company:

(i) the Company and the Corporation shall undertake all actions, including an issuance, reclassification, distribution, division or recapitalization, with respect to the Common Units, Class A Common Stock or Class B Common Stock, as applicable, to maintain at all times (A) a one-to-one ratio between the number of Common Units owned by the Corporation, directly or indirectly, and the number of outstanding shares of Class A Common Stock, (B) a one-to-one ratio between the number of Common Units owned by Members (other than the Corporation and its Subsidiaries), directly or indirectly, and the number of outstanding shares of Class B Common Stock or Class B Warrants owned by such Members, directly or indirectly, and (C) a one-to-one ratio between the number of Series A Preferred Units owned by the Corporation, directly or indirectly, and the number of outstanding shares of Series A Preferred Stock.

(ii) in the event the Corporation issues, transfers or delivers from treasury stock or repurchases Class A Common Stock in a transaction not contemplated in this Agreement, the Board of Managers, the Corporation and the Company shall take all actions such that, after giving effect to all such issuances, transfers, deliveries or repurchases, the number of outstanding Common Units owned, directly or indirectly, by the Corporation will equal on a one-for-one basis the number of outstanding shares of Class A Common Stock; and

(iii) in the event the Corporation issues, transfers or delivers from treasury stock or repurchases or redeems the Corporation's preferred stock in a transaction not contemplated in this Agreement, the Board of Managers and the Corporation shall take all actions such that, after giving effect to all such issuances, transfers, deliveries, repurchases or redemptions, the Corporation, directly or indirectly, holds (in the case of any issuance, transfer or delivery) or ceases to hold (in the case of any repurchase or redemption) equity interests in the Company which (in the good faith determination by the Board of Managers) are in the aggregate substantially economically equivalent to the outstanding preferred stock of the Corporation so issued, transferred, delivered, repurchased or redeemed.

(b) Except as otherwise determined by the Board of Managers in its reasonable discretion, the Company and the Corporation shall not undertake any subdivision (by any Unit split, stock split, Unit distribution, stock distribution, reclassification, division, recapitalization or similar event) or combination (by reverse Unit split, reverse stock split, reclassification, division, recapitalization or similar event) of the Common Units, Series A Preferred Units, Class A Common Stock or Class B Common Stock that is not accompanied by an identical subdivision or combination of the applicable classes of Units or stock in each case, unless such action is necessary to maintain at all times a one-to-one ratio between either the number of Common Units owned, directly or indirectly, by the Corporation, the number of outstanding shares of Class A Common Stock or the number of Common Units owned by Members (other than the Corporation and its Subsidiaries) and the number of outstanding shares of Class B Common Stock, or the number of Series A Preferred Units owned by the Corporation, directly or indirectly, and the number of outstanding shares of Series A Preferred Stock, in each case as contemplated by Section 3.04(a)(i).

(c) The Company shall only be permitted to issue additional Common Units or establish other classes or series of Units or other Equity Securities in the Company to the Persons and on the terms and conditions provided for in Section 3.01(c), Section 3.03, this Section 3.04, Section 3.10 and Section 3.11. Subject to the foregoing, the Board of Managers may cause the Company to issue additional Common Units authorized under this Agreement or establish other classes or series of Units or other Equity Securities in the Company at such times and upon such terms as the Board of Managers shall determine and the Board of Managers shall amend this Agreement as necessary in connection with the issuance of additional Common Units and admission of additional Members under this Section 3.04 without the requirement of any consent or acknowledgement of any other Member.

(d) Notwithstanding any other provision of this Agreement, if the Corporation or any of its Subsidiaries (other than the Company and its Subsidiaries) acquires or holds any material amount of cash in excess of any monetary obligations it reasonably anticipates, the Corporation and the Board of Managers may, in their sole discretion, use such excess cash amount in such manner, and make such adjustments to or take such other actions with respect to the capitalization of the Corporation and the Company, as the Corporation and the Board of Managers in good faith determine to be fair and reasonable to the shareholders of the Corporation and to the Members and to preserve the intended economic effect of this Section 3.04, Article XI and the other provisions hereof.

Section 3.05 Repurchase or Redemption of Shares of Class A Common Stock. Except as otherwise determined by the Board of Managers in connection with the use of cash or other assets held by the Corporation, if at any time, any shares of Class A Common Stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the Corporation for cash, then the Board of Managers shall cause the Company, immediately prior to such repurchase or redemption of Class A Common Stock, to redeem a corresponding number of Common Units held (directly or indirectly) by the Corporation, at an aggregate redemption price equal to the aggregate purchase or redemption price of the shares of Class A Common Stock being repurchased or redeemed by the Corporation (plus any expenses related thereto) and upon such other terms as are the same for the shares of Class A Common Stock being repurchased or redeemed by the Corporation. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any repurchase or redemption if such repurchase or redemption would violate any applicable Law.

Section 3.06 Certificates Representing Units; Lost, Stolen or Destroyed Certificates; Registration and Transfer of Units.

(a) Units shall not be certificated unless otherwise determined by the Board of Managers. If the Board of Managers determines that one or more Units shall be certificated, each such certificate shall be signed by or in the name of the Company, by any two authorized officers of the Company, representing the number of Units held by such holder. Such certificate shall be in such form (and shall contain such legends) as the Board of Managers may determine. Any or all of such signatures on any certificate representing one or more Units may be a facsimile, engraved or printed, to the extent permitted by applicable Law. No Units shall be treated as a “security” within the meaning of Article 8 of the Uniform Commercial Code unless all Units then outstanding are certificated; notwithstanding anything to the contrary herein, including Section 15.03, the Board of Managers is authorized to amend this Agreement in order for the Company to opt-in to the provisions of Article 8 of the Uniform Commercial Code without the consent or approval of any Member of any other Person.

(b) If Units are certificated, the Board of Managers may direct that a new certificate representing one or more Units be issued in place of any certificate theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon delivery to the Board of Managers of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Board of Managers may require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

(c) To the extent Units are certificated, upon surrender to the Company or the transfer agent of the Company, if any, of a certificate for one or more Units, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, in compliance with the provisions hereof, the Company shall issue a new certificate representing one or more Units to the Person entitled thereto, cancel the old certificate and record the transaction upon its books. Subject to the provisions of this Agreement, the Board of Managers may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, Transfer and registration of Units.

Section 3.07 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

Section 3.08 No Withdrawal. No Person shall be entitled to withdraw any part of such Person's Capital Contribution or Capital Account or to receive any Distribution from the Company, except as expressly provided in this Agreement.

Section 3.09 Loans From Members. Loans by Members to the Company shall not be considered Capital Contributions. Subject to the provisions of Section 3.01(b), the amount of any such advances shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

Section 3.10 Corporate Equity Plans.

(a) *Restricted Class A Common Stock Granted to LLC Employees.* If at any time or from time to time, in connection with any Equity Plan, any shares of Class A Common Stock are issued to an LLC Employee (including any shares of Class A Common Stock that are subject to forfeiture in the event such LLC Employee terminates his or her employment with the Company or any Subsidiary) in consideration for services performed for the Company or any Subsidiary:

(i) The Corporation shall issue such number of shares of Class A Common Stock as are to be issued to such LLC Employee in accordance with the Equity Plan;

(ii) On the date (such date, the “*Vesting Date*”) that the Value of such shares is includible in taxable income of such LLC Employee, the following events will be deemed to have occurred: (1) the Corporation shall be deemed to have sold such shares of Class A Common Stock to the Company (or if such LLC Employee is an employee of, or other service provider to a Subsidiary, to such Subsidiary) for a purchase price equal to the Value of such shares of Class A Common Stock, (2) the Company (or such Subsidiary) shall be deemed to have delivered such shares of Class A Common Stock to such LLC Employee, (3) the Corporation shall be deemed to have contributed the purchase price for such shares of Class A Common Stock to the Company as a Capital Contribution, and (4) in the case where such LLC Employee is an employee of a Subsidiary, the Company shall be deemed to have contributed such amount to the capital of the Subsidiary; and

(iii) The Company shall issue to the Corporation on the Vesting Date a number of Common Units equal to the number of shares of Class A Common Stock issued under Section 3.10(a)(i) in consideration for a Capital Contribution that the Corporation is deemed to make to the Company pursuant to clause (3) of Section 3.10(a)(ii) above.

(b) *Future Stock Incentive Plans.* Nothing in this Agreement shall be construed or applied to preclude or restrain the Corporation from adopting, modifying or terminating stock incentive plans for the benefit of employees, directors or other business associates of the Corporation, the Company or any of their respective Affiliates. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Corporation, amendments to this Section 3.10 may become necessary or advisable and that any approval or consent to any such amendments requested by the Corporation shall be deemed granted by the Board of Managers and the Members, as applicable, without the requirement of any further consent or acknowledgement of any other Member.

(c) *Anti-dilution Adjustments.* For all purposes of this Section 3.10, the number of shares of Class A Common Stock and the corresponding number of Common Units shall be determined after giving effect to all anti-dilution or similar adjustments that are applicable, as of the date of exercise or vesting, to the option, warrant, restricted stock or other equity interest that is being exercised or becomes vested under the applicable Equity Plan and applicable award or grant documentation.

Section 3.11 Dividend Reinvestment Plan, Cash Option Purchase Plan, Stock Incentive Plan or Other Plan. Except as may otherwise be provided in this Article III, all amounts received or deemed received by the Corporation in respect of any dividend reinvestment plan, cash option purchase plan, stock incentive or other stock or subscription plan or agreement, either (a) shall be utilized by the Corporation to effect open market purchases of shares of Class A Common Stock, or (b) if the Corporation elects instead to issue new shares of Class A Common Stock with respect to such amounts, shall be contributed by the Corporation to the Company in exchange for additional Common Units. Upon such contribution, the Company will issue to the Corporation a number of Common Units equal to the number of new shares of Class A Common Stock so issued.

Section 3.12 Rights of Series A Preferred Units.

(a) The Corporation shall be entitled to receive liquidating distributions in respect of the Series A Preferred Units in the manner set forth in Section 14.02(c). The Corporation shall be entitled to receive distributions other than liquidating distributions in respect of the Series A Preferred Units in the manner set forth in Section 4.01(a)(i) and Section 4.01(b)(i)(A).

(b) The holders of the Series A Preferred Units shall be entitled to vote on all matters requiring the approval or vote of the holders of Units. Notwithstanding any other provision of this Agreement, in addition to all other requirements imposed by the Act, and all other voting rights granted under this Agreement, the affirmative vote of the holder of a majority of the outstanding Series A Preferred Units, voting separately as a class based upon one vote per Series A Preferred Unit, shall be necessary on any matter that (i) adversely affects any of the rights, preferences and privileges of the Series A Preferred Units or (ii) amends, waives or modifies any of the rights or terms of the Series A Preferred Units.

(c) Each time that a share of Series A Preferred Stock is converted into shares of Class A Common Stock, an equal number of Series A Preferred Units shall automatically convert (without any further action of the Company or the Corporation) into Common Units at the same conversion ratio as applied to the conversion of the Series A Preferred Stock into Class A Common Stock (the “**Series A Preferred Conversion**”).

(d) Immediately prior to the time that a share of Series A Preferred Stock is to be repurchased or redeemed by the Corporation, the Company shall repurchase or redeem an equal number of Series A Preferred Units in exchange for the same consideration that is to be paid by the Corporation in the repurchase or redemption of the Series A Preferred Stock. For example, if 100,000 shares of Series A Preferred Stock are to be repurchased by the Corporation in exchange for \$3,000,000 in cash and 400,000 shares of Class A Common Stock, then 100,000 Series A Preferred Units shall be repurchased by the Company from the Corporation in exchange for \$3,000,000 in cash and 400,000 Common Units.

(e) Notwithstanding Section 3.12(c) and Section 3.12(d), no repurchase, redemption or conversion shall be effected to the extent such repurchase, redemption or conversion would render the Company insolvent or violate the Delaware Act or applicable Law. For purposes of the foregoing sentence, “insolvency” means the inability of the Company to meet its payment obligations when due. Notwithstanding Section 3.12(d), no repurchase or redemption of the Series A Preferred Units shall be required or effected if such redemption would cause the Series A Preferred Units to be treated as “disqualified stock,” “disqualified capital stock” or any equivalent term under any credit agreement, loan agreement, indenture or other credit facility to which the Company is a party at the time of the repurchase or redemption.

(f) It is intended that the conversion right applicable to the Series A Preferred Units will be treated as a noncompensatory option within the meaning of Treasury Regulations Section 1.721-2(f). Consistent with such intention, the Company shall comply with the allocation provisions set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s) and 1.704-1(b)(4)(x) (including making any required “corrective” allocations in accordance with those Treasury Regulations) and other applicable provisions in this Agreement.

ARTICLE IV
DISTRIBUTIONS

Section 4.01 Distributions.

(a) *Distributable Cash; Other Distributions.*

(i) After making provision for Distributions under Section 4.01(b) and subject to Section 4.01(c), Distributions shall, with respect to each outstanding Series A Preferred Unit, accrue on the Series A Preferred Accrued Value at the Series A Preferred Annual Rate on each Series A Preferred Unit and shall be cumulative and accrue daily from and after the Effective Date, but shall compound on a semi-annual basis on each Semi-Annual Distribution Date (the “***Series A Preferred Accrued Distributions***”). Such Series A Preferred Accrued Distributions may be paid in cash (“***Series A Preferred Cash Distribution***”) or by increasing the Series A Preferred Accrued Value by the Series A Preferred Annual Rate (decreased proportionately to the extent of any cash paid in respect of such Series A Preferred Accrued Distributions for such Series A Preferred Distribution Period (e.g., if 25% of the Series A Preferred Accrued Distributions for such Series A Preferred Distribution Period is paid in cash, the rate would be reduced by 1.0% to 3.0%)) in lieu of paying such Series A Preferred Accrued Distributions in cash (in part or in full), such increase to be effective at 9:00 a.m. (New York time) on the day following the last day of such Series A Preferred Distribution Period, and shall be payable only to the extent that an equal amount of cash dividends are declared by the Corporation with respect to the Series A Preferred Stock, and when so declared, shall be payable immediately prior to the time that such cash dividends are paid by the Corporation with respect to the Series A Preferred Stock. Once a Series A Preferred Cash Distribution has been made under this Section 4.01(a)(i) in respect of a Series A Preferred Accrued Distributions, the amount of Series A Preferred Accrued Distributions shall be reduced by the amount of such Series A Preferred Cash Distribution.

(ii) After making or providing for any Distributions under Section 4.01(a)(i) and Section 4.01(b), and subject to Section 4.01(c), Distributions to Members may be declared by the Board of Managers out of Distributable Cash or other funds or property legally available therefor in such amounts, at such time and on such terms (including the payment dates of such Distributions) as the Board of Managers in its sole discretion shall determine using such record date as the Board of Managers may designate. All Distributions made under this Section 4.01(a)(ii) shall be made to the Members as of the close of business on such record date in accordance with each Member’s Percentage Interest (other than, for the avoidance of doubt, any Distributions made pursuant to Section 4.01(a)(iv)) as of the close of business on such record date; provided, however, that the Manager shall have the obligation to make distributions as set forth in Section 4.01(b) and Section 14.02.

(iii) Notwithstanding anything to the contrary in this Section 4.01(a), (A) the Company shall not make a distribution (other than Tax Distributions under Section 4.01(b)) to any Member in respect of any Common Units which remain subject to vesting conditions in accordance with any applicable equity plan or individual award agreement and (B) with respect to any amounts that would otherwise have been distributed to a Member but for the preceding clause (A), such amount shall be held in trust by the Company for the benefit of such Member unless and until such time as such Common Units have vested in accordance with the applicable equity plan or individual award agreement, and within five Business Days of such time, the Company shall distribute such amounts to such Member.

(iv) Notwithstanding the provisions of Section 4.01(a)(ii), the Board of Managers, in its sole discretion, may authorize that cash be paid to the Corporation (which payment shall be made without pro rata distributions to the other Common Units) in exchange for the redemption, repurchase or other acquisition of Equity Securities in the Company which are held by the Corporation to the extent that such cash payment is used to redeem, repurchase or otherwise acquire an equal number of corresponding Equity Securities of the Corporation in accordance with Section 3.05.

(v) The Corporation shall not be entitled to receive, with respect to any Series A Preferred Units that are converted pursuant to a Series A Preferred Conversion, any payment of distributions declared pursuant to Section 4.01(a)(i) if such distribution follows the date on which such Series A Preferred Conversion occurs.

(vi) Notwithstanding any other provision herein to the contrary, no Distributions shall be made to any Member to the extent such Distribution would render the Company insolvent or violate the Delaware Act or any applicable Law. For purposes of the foregoing sentence, “insolvency” means the inability of the Company to meet its payment obligations when due.

(b) *Tax Distributions.*

(i) With respect to each Taxable Year, the Company shall, to the extent the Company has available cash for distribution by the Company under applicable Law and subject to any applicable agreement to which the Company or any of its Subsidiaries is a party governing the terms of third party indebtedness for borrowed money, and subject to the retention and establishment of reserves, or payment to third parties, of such funds as the Board of Managers deems necessary or desirable in its sole discretion with respect to the reasonable needs and obligations of the Company or any of its Subsidiaries and to prevent their insolvency (such limitations, the “**Liquidity Limitations**”), make cash distributions (“**Tax Distributions**”) as follows:

(A) to the Corporation at such times and in such amounts as the Board of Managers reasonably determines is necessary to enable the Corporation to timely satisfy all of its U.S. federal, state and local and non-U.S. tax liabilities with respect to any items of gross income and gain allocated to it, and any guaranteed payments for capital (within the meaning of Section 707(a) of the Code), in each case with respect to the Series A Preferred Units (the “**Preferred Unit Related Taxes**”); provided, that in no circumstances shall the amounts distributed pursuant to this Section 4.01(b)(i)(A) exceed the Corporation’s actual U.S. federal, state and local and non-U.S. cash tax liabilities with respect to such Taxable Year; provided, further, that the amounts distributable pursuant to this Section 4.01(b)(i)(A) shall be reduced, in the sole discretion of the Board of Managers, to the extent the amount distributable to the Corporation pursuant to Section 4.01(b)(i)(B) exceeds the Corporation’s actual tax obligations (excluding Preferred Unit Related Taxes) for the relevant Taxable Year or quarter, as applicable; and

(B) to each Member in an amount equal to (1) such Member’s Assumed Tax Liability; *provided, however*, that to the extent a Member would otherwise be entitled to receive less than its Percentage Interest of the aggregate Tax Distributions to be paid pursuant to this Section 4.01(b)(i)(B) on any given date, then the Tax Distributions to such Member shall be increased, as necessary, to ensure that all such Tax Distributions made pursuant to this Section 4.01(b)(i)(B) are made pro rata in accordance with the Members’ respective Percentage Interest or (2) if the amount the Corporation would receive under clause (1) is, in the sole discretion of the Board of Managers, reasonably expected to be less than the amount that will enable the Corporation to meet its tax obligations (other than Preferred Unit Related Taxes), then (I) the Corporation shall receive an amount that will enable the Corporation to meet its tax obligations (other than Preferred Unit Related Taxes) for the relevant Taxable Year or quarter, as applicable, and (II) the Members (other than the Corporation) shall receive an amount necessary to ensure that the Tax Distributions made pursuant to this Section 4.01(b)(i)(B), when taking into account the amount to be distributed to the Corporation under clause (2)(I), are made pro rata in accordance with the Members’ respective Percentage Interests.

(ii) Tax Distributions pursuant to Section 4.01(b)(i) shall be estimated by the Company on a quarterly basis and, to the extent feasible, shall be distributed to the Members (together with a statement showing the calculation of such Tax Distribution and an estimate of the Company's net taxable income allocable to each Member for such period) on a quarterly basis on April 15th, June 15th, September 15th and December 15th (or such other dates for which corporations or individuals are required to make quarterly estimated tax payments for U.S. federal income tax purposes, whichever is earlier) (each, a "**Quarterly Tax Distribution**"); *provided*, that the foregoing shall not restrict the Company from making a Tax Distribution on any other date as the Company determines is necessary to enable the Members to timely make estimated income tax payments. Quarterly Tax Distributions shall take into account the estimated taxable income or loss of the Company for the Taxable Year through the end of the relevant quarterly period. A final accounting for Tax Distributions shall be made for each Taxable Year after the allocation of the Company's actual net taxable income or loss has been determined and any shortfall in the amount of Tax Distributions a Member received for such Taxable Year based on such final accounting shall promptly be distributed to such Member (subject to the Liquidity Limitations). For the avoidance of doubt, any excess Tax Distributions a Member receives with respect to any Taxable Year shall reduce future Tax Distributions otherwise required to be made to such Member with respect to any subsequent Taxable Year, but shall not reduce Tax Distributions made to a Member to provide such Member with its Percentage Interest of Tax Distributions made pursuant to Section 4.01(b)(i)(B). Notwithstanding anything to the contrary in this Agreement, the Board of Managers shall make, in its reasonable discretion, equitable adjustments (downward (but not below zero) or upward) to the Members' Tax Distributions (but in any event accordance with the Members' respective Percentage Interests) to take into account increases or decreases in the Percentage Interest of each Member during the relevant period.

(iii) In the event of any audit by, or similar event with, a Governmental Entity that affects the calculation of any Member's Assumed Tax Liability for any Taxable Year (other than an audit conducted pursuant to the Revised Partnership Audit Provisions (or any similar provision of state, local or other Law) for which no election is made pursuant to Section 6226 of the Code and the Treasury Regulations promulgated thereunder (or any similar provision of state, local or other Law)), or in the event the Company files an amended tax return or administrative adjustment request, each Member's Assumed Tax Liability and Preferred Unit Related Taxes with respect to such year shall be recalculated by giving effect to such event (for the avoidance of doubt, taking into account interest, penalties or additions to tax). Any shortfall in the amount of Tax Distributions the Members and former Members received for the relevant Taxable Years based on such recalculated Assumed Tax Liability promptly shall be distributed to such Members and the successors of such former Members, except, for the avoidance of doubt, to the extent Distributions were made to such Members and former Members pursuant to Section 4.01(a)(ii), Section 4.01(a)(iii) and this Section 4.01(b) in the relevant Taxable Years sufficient to cover such shortfall.

(iv) In the event that an adjustment pursuant to Section 481(a) of the Code relating to any income, gain, loss, deduction or credit with respect to a taxable period ending on or prior to the Effective Date (any such adjustment, the "481 Income Adjustment") results in a requirement under Section 4.01(b) for the Company to make material Tax Distributions, then the Manager and the Members shall cooperate in good faith and use commercially reasonable efforts to minimize the amount of such Tax Distributions required, taking into account the amount of cash needed by the Members to meet their tax obligations with respect to their interests in the Company, items of deductions, losses and credits available in the relevant Taxable Year that may be used to offset such 481 Income Adjustment, and the cash requirements of the Company.

(c) *Limitations.* For purposes of determining the amount of Distributions to be made under this Section 4.01 (including Tax Distributions), each Member shall be treated as having made the Capital Contributions made by, been allocated the net taxable income or loss of the Company (in accordance with the definition of Assumed Tax Liability) allocated to, and received the Distributions made to or received by, its predecessors in respect of any of such Member's Units.

ARTICLE V
CAPITAL ACCOUNTS; ALLOCATIONS; TAX MATTERS

Section 5.01 Capital Accounts.

(a) The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulations Section 1.704-1(b)(2)(iv) and Section 704(b) of the Code. For this purpose, the Company may (in the discretion of the Board of Managers), upon the occurrence of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv), increase or decrease the Capital Accounts in accordance with the rules of such Treasury Regulations to reflect a revaluation of the Company's property. If any noncompensatory options are outstanding upon the occurrence of a revaluation event described in this Section 5.01(a) (including the convertible feature of the Series A Preferred Units) (other than, if applicable, the noncompensatory options being exercised that give rise to the occurrence of such event), the Company shall adjust the Book Values of its properties in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(1) and 1.704-1(b)(2)(iv)(h)(2).

(b) For purposes of computing the amount of any item of income, gain, loss or deduction with respect to the Company to be allocated pursuant to this Article V and to be reflected in the Capital Accounts of the Members, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); *provided however* that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Section 705(a)(1)(B) of the Code or Section 705(a)(2)(B) of the Code and Treasury Regulations Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includible in gross income or are not deductible for U.S. federal income tax purposes.

(ii) If the Book Value of any property of the Company is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e), (f) or (s), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of property of the Company having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to property of the Company having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any asset of the Company pursuant to Sections 732(d), 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

Section 5.02 Allocations. Except as otherwise provided in this Agreement, and after giving effect to Section 5.03 and Section 5.04, Net Profits and Net Losses for any Taxable Year or Fiscal Period shall be allocated to the Members in such manner that the Capital Account balance of each Member shall, to the greatest extent possible immediately after making such allocations, be equal (proportionately) to (x) the amount that would be distributed to such Member (after satisfaction of any financial obligations of each Member to the Company under any provisions of this Agreement), if (a) the Company were to sell all or substantially all assets of the Company for their Book Values, (b) all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Book Values of the assets securing such liability), (c) the Company were to distribute the remaining proceeds of sale pursuant to Section 14.02(c) immediately after making such allocations and (d) the Company were to dissolve pursuant to Article XIV, minus (y) such Member's share of Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets; *provided* that, solely for these purposes, (i) any Common Units which are subject to vesting conditions in accordance with any applicable equity plan or individual award agreement are treated as fully vested, and (ii) the Series A Preferred Applicable Percentage shall be 100% unless and until there is actually an event that results in a different Series A Preferred Applicable Percentage.

Section 5.03 Regulatory Allocations.

(a) Losses attributable to partner nonrecourse debt (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulations Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulations Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulations Section 1.704-2(i)(4).

(b) Nonrecourse deductions (as determined according to Treasury Regulations Section 1.704-2(b)(1)) for any Taxable Year shall be allocated pro rata among the Members in accordance with their Percentage Interests. Except as otherwise provided in Section 5.03(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Member shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulations Section 1.704-2(f). This Section 5.03(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulations Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) If any Member that unexpectedly receives an adjustment, allocation or Distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) (4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Section 5.03(a) and Section 5.03(b) but before the application of any other provision of this Article V, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.03(c) is intended to be a qualified income offset provision as described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) If the allocation of Net Losses to a Member as provided in Section 5.02 would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of Losses as will not create or increase an Adjusted Capital Account Deficit. The Net Losses that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to this Section 5.03(d).

(e) Profits and Losses described in Section 5.01(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(f) The allocations set forth in Section 5.03(a) through and including Section 5.03(e) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the Company or make Distributions. Accordingly, notwithstanding the other provisions of this Article V, but subject to the Regulatory Allocations, income, gain, deduction and loss with respect to the Company shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero.

Section 5.04 Final Allocations.

(a) Notwithstanding any contrary provision in this Agreement except Section 5.03, if (i) the date on which a Liquidating Event occurs there is at least one outstanding Series A Preferred Unit and (ii) after having made all allocations provided for in Section 5.03 for the Taxable Year or portion thereof in which the Liquidating Event occurs, the Series A Per Unit Capital Amount of each Series A Preferred Unit would not equal or exceed the Series A Liquidation Value, then items of income, gain, loss and deduction for such Taxable Year or portion thereof shall instead be allocated among the Members in a manner determined appropriate by the Board of Managers so as to cause, to the maximum extent possible, the Series A Per Unit Capital Amount in respect of each Series A Preferred Unit to equal the Series A Liquidation Value (and no other allocation pursuant to this Agreement shall reverse the effect of such allocation). In the event that (x) the date on which a Liquidating Event occurs is on or before the date (not including any extension of time) prescribed by law for the filing of the Company's federal income tax return for the Taxable Year immediately prior to the Taxable Year in which the Liquidating Event occurs and (y) the reallocation of items for the Taxable Year in which the Liquidating Event occurs as set forth above in this Section 5.04(a) fails to achieve the Series A Per Unit Capital Amounts described above, then items of income, gain, loss and deduction for such Taxable Year shall be allocated among all Members in a manner that will, to the maximum extent possible and after taking into account all other allocations made pursuant to this Section 5.04(a), cause the Series A Per Unit Capital Amount in respect of each Series A Preferred Unit to equal the Series A Liquidation Value.

(b) If any holder of Common Units which are subject to vesting conditions forfeits (or the Company has repurchased at less than fair market value) all or a portion of such holder's unvested Common Units, the Company shall make forfeiture allocations in respect of such unvested Common Units in the manner and to the extent required by proposed Treasury Regulations Section 1.704-1(b)(4)(xii) (as such proposed Treasury Regulations may be amended or modified, including upon the issuance of temporary or final Treasury Regulations).

Section 5.05 Tax Allocations.

(a) The income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; *provided* that, if any such allocation is not permitted by the Code or other applicable Law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of taxable income, gain, loss and deduction of the Company with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value using any permissible method or methods selected in the discretion of the Board of Managers.

(c) If the Book Value of any asset of the Company is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e), (f) or (s), including adjustments to the Book Value of any asset of the Company in connection with the execution of this Agreement, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value using any permissible method or methods selected in the discretion of the Board of Managers.

(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members as determined by the Board of Managers taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

(e) For purposes of determining a Member's share of the Company's "excess nonrecourse liabilities" within the meaning of Treasury Regulations Section 1.752-3(a)(3), each Member's interest in income and gain shall be determined pursuant to any proper method, as reasonably determined by the Board of Managers; *provided* that, each year the Board of Managers shall use its reasonable best efforts (using in all instances any proper method, including the "additional method" described in Treasury Regulations Section 1.752-3(a)(3)) to allocate a sufficient amount of the excess nonrecourse liabilities to those Members who would have at the end of the applicable Taxable Year, but for such allocation, taxable income due to the deemed distribution of money to such Member pursuant to Section 752(b) of the Code that is in excess of such Member's adjusted tax basis in its Units.

(f) If, pursuant to Section 5.03(e), the Board of Managers causes a Capital Account reallocation in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(2)(iv)(s)(3), the Board of Managers shall make corrective allocations in accordance with principles similar to those set forth in Treasury Regulations Section 1.704-1(b)(4)(x).

(g) Allocations pursuant to this Section 5.05 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other items of the Company pursuant to any provision of this Agreement.

Section 5.06 Adjustment for Noncompensatory Options. So long as the Series A Preferred Units (and any other Units or other securities issued by the Company that are treated as noncompensatory options, as defined in Treasury Regulations Section 1.721-2) are outstanding, the Board of Managers shall make such adjustments to the Book Value of the Company's assets, allocation of Profits and Losses, Capital Accounts and allocations of items for income tax purposes as it may determine may be necessary to comply with the provisions of Treasury Regulations Section 1.721-2 and Treasury Regulations Section 1.704-1(b)(2)(iv)(s) or any successor provisions relating thereto and to properly reflect the economic sharing arrangement associated with the noncompensatory options.

Section 5.07 Compliance with Tax Laws. The allocation rules set forth in Section 5.01 through Section 5.06 are intended to comply with the Code and Treasury Regulations and to ensure that all allocations under this Article V are respected for U.S. federal income tax purposes and reflect the economic sharing arrangement among the Members. If for any reason the Board of Managers (or its designee) determines that any provisions in Section 5.01 through Section 5.06 do not comply with the Code or Treasury Regulations or that the allocations under this Article V may not be respected for U.S. federal income tax purposes or reflect the economic sharing arrangement among the Members, the Board of Managers may take all reasonable actions, including amending this Article V or adjusting a Member's Capital Account or how Capital Accounts are maintained, to ensure compliance with the Code and Treasury Regulations and that the allocations provided for in this Article V shall be respected for U.S. federal income tax purposes; *provided however* that, no such change shall have a material adverse effect upon the amount of cash or other property distributable to any Member.

Section 5.08 Indemnification and Reimbursement for Payments on Behalf of a Member. If the Company or any other Person in which the Company holds an interest is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity, including any amounts withheld from amounts directly or indirectly payable to the Company or to any other Person in which the Company holds an interest) that is specifically attributable to a Member or a Member's status as such (including federal income taxes, additions to tax, interest and penalties as a result of obligations of the Company pursuant to the Revised Partnership Audit Provisions (or any similar provision of state, local and other Law), federal withholding taxes, state personal property taxes and state unincorporated business taxes, but excluding payments such as payroll taxes, withholding taxes, benefits or professional association fees and the like required to be made or made voluntarily by the Company on behalf of any Member based upon such Member's status as an employee of the Company) (a "**Withholding Payment**"), then such Member shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). If the Company incurs an Imputed Underpayment Amount, the Board of Managers shall determine in its reasonable discretion the portion of such Imputed Underpayment Amount attributable to each Member or former Member and such attributable amount shall be treated as a Withholding Payment with respect to such Member or former Member. The Board of Managers may offset Distributions to which a Member is otherwise entitled under this Agreement against such Member's obligation to indemnify the Company under this Section 5.08. In addition, notwithstanding anything to the contrary, each Member agrees that any Cash Settlement such Member is entitled to receive pursuant to Article XI may be offset by an amount equal to such Member's obligation to indemnify the Company under this Section 5.08 and that such Member shall be treated as receiving the full amount of such Cash Settlement and paying to the Company an amount equal to such obligation. A Member's obligation to make payments to the Company under this Section 5.08 shall survive the transfer or termination of any Member's interest in any Units of the Company, the termination of this Agreement and the dissolution, liquidation, winding up and termination of the Company. In the event that the Company has been terminated prior to the date such payment is due, such Member shall make such payment to the Board of Managers (or its designee), which shall distribute such funds in accordance with this Agreement. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 5.08, including instituting a lawsuit to collect such contribution with interest calculated at a rate per annum equal to the sum of the Base Rate plus 300 basis points (but not in excess of the highest rate per annum permitted by Law). Each Member hereby agrees to furnish to the Company such information and forms as required or reasonably requested in order to comply with any Laws and regulations governing withholding of tax or in order to claim any reduced rate of, or exemption from, withholding to which the Member is legally entitled. The Company may withhold any amount that it determines is required to be withheld from any amount otherwise payable to any Member hereunder, and any such withheld amount shall be deemed to have been paid to such Member for purposes of this Agreement.

ARTICLE VI
MANAGEMENT

Section 6.01 Board of Managers.

(a) The Company shall be managed by a board of managers (the “**Board of Managers**” or “**Board**”) comprised of five (5) individuals (subject to Section 6.01(d) and Section 6.01(g)) (each a “**Manager**” and together the “**Managers**”). The Managers shall be elected as follows:

(i) the Members holding Common Units representing more than fifty percent (50%) of the total Common Units entitled to vote (the “**Majority Members**”) shall have the right to designate two (2) Managers (the “**Non-PubCo Managers**”); and

(ii) the Corporation shall have the right to designate three (3) Managers (the “**PubCo Managers**”).

(b) From time to time following the date hereof, the Corporation, without the consent of any other Member, shall be entitled to increase or decrease (i) the size of the Board and/or (ii) the number of PubCo Managers and Non-PubCo Managers on such Board; *provided*, that the consent of the holders of a majority of the Series A Preferred Stock shall be required before the Corporation increases or decreases the number of PubCo Managers and/or Non-PubCo Managers in a manner that would result in the PubCo Managers ceasing to represent a majority of the Board. Following any such adjustment, the Members shall be obligated to remove any Managers and to elect (i) the applicable number of the PubCo Managers as designated by the Corporation and/or the holders of a majority of the Series A Preferred Units and (ii) the applicable number of the Non-PubCo Managers as designated by the holders of a majority of the Units then outstanding held by Members other than the Corporation and its wholly-owned Subsidiaries in accordance with such adjusted Board membership requirements.

(c) Each Manager shall serve in such capacity until the first to occur of (A) such Manager’s death, disability, removal or resignation, or (B) the appointment of such Manager’s successor pursuant to the provisions of Section 6.01. Any Manager may resign at any time by giving written notice to the Board. Unless otherwise specified in the notice, the resignation shall take effect upon the giving of such notice to the Board, and the acceptance of the resignation shall not be necessary to make it effective. In the event of any vacancy in the Board of Managers or upon the death, disability, removal or resignation of any Manager, a new or successor Manager shall be appointed by the Corporation or the Majority Members, as the case may be, who had designated the departing Member.

(d) Notwithstanding anything to the contrary contained in Section 6.01, each Manager shall serve at the pleasure of the Member(s) or Person(s) who appointed such Manager and may be removed or replaced at any time only upon written notice from such Member(s) or Person(s) having the right to appoint such Manager position pursuant to Section 6.01.

(e) Meetings of the Board of Managers may be held at any time and at any location specified in the notice thereof in such place within or without the State of Delaware. A majority of the Managers may call a meeting of the Board of Managers. Reasonable and sufficient notice of each meeting shall be given to each Manager, and in any event not less than twenty-four (24) hours prior to any such meeting (unless otherwise waived by each of the Managers).

(f) In any matter presented to the Board of Managers for approval or consent, a majority of Managers shall constitute a quorum. At any meeting of the Board of Managers at which a quorum is present, unless otherwise specified in this Agreement, the affirmative vote or consent of a majority (i.e., greater than 50%) of such quorum shall be the approval or consent of the Board of Managers. No individual Manager may act for the Board of Managers or on behalf of the Company absent a specific and duly adopted delegation of authority from the Board of Managers.

(g) At any time any particular Member has the right to appoint more than one (1) Manager, such Member may, upon notice to the Company and the other Members, vest in a single Manager the rights and powers of all Manager seats that such Member is entitled to appoint (such that, by way of example, at any time the Corporation is entitled to appoint three (3) Managers, the Corporation may vest in a single Manager appointed by the Corporation three (3) Manager votes and the other rights and powers that would be held by the Corporation’s three (3) Managers, severally). The provisions of this Agreement shall be equitably interpreted to give effect to the vesting in a single Manager of the status, rights and powers of multiple Manager seats that a Member is entitled to appoint, including for purposes of the determination of whether or not a quorum is present.

(h) The Board of Managers may act from time to time by written consent in lieu of a meeting if all of the Managers execute such written consent.

(i) Any action required to be taken at a meeting of the Board of Managers, or any action that may be taken at a meeting of the Board of Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. The Company shall make reasonable accommodation for such participation upon the prior request of any Manager. Participation in such a meeting shall constitute presence in person at such meeting.

(j) No Manager shall be entitled to compensation by the Company for any services as a Manager, provided that the Company may reimburse each Manager for its reasonable, documented out-of-pocket expenses for attending meetings of the Board of Managers and other similar expenses incurred in connection with such Manager's service on the Board of Managers.

(k) In connection with the performance of their duties as members of the Board, the Managers acknowledge that they will owe to the Members the same fiduciary duties as they would owe to the stockholders of a Delaware corporation under the General Corporation Law of the State of Delaware, as amended from time to time (or any corresponding provisions of succeeding law) if they were members of the board of directors of such a corporation and the Members were stockholders of such corporation.

(l) The holders of a majority of the Series A Preferred Units may designate one person to receive (i) notice of, and attend and participate in, all meetings of the Board of Managers; (ii) all information sent to the Managers in their capacity as such; (iii) copies of all proposed written consents in lieu of meetings of the Board of Managers by no later than simultaneously with the delivery thereof to the Board in accordance with Section 6.01(e); and (iv) copies of all fully executed written consents in lieu of meetings of the Board of Managers within ten (10) days after execution.

Section 6.02 Authority of Managers; Officer Delegation.

(a) Except for situations in which the approval of any Member(s) is specifically required by this Agreement, (i) all management powers over the business and affairs of the Company shall be exclusively vested in the Board of Managers, (ii) the Board of Managers shall conduct, direct and exercise full control over all activities of the Company and (iii) no Member shall have any right, authority or power to vote, consent or approve any matter, whether under the Delaware Act, this Agreement or otherwise. Each Manager shall be a "manager" of the Company for the purposes of the Delaware Act. Except as otherwise expressly provided for herein and subject to the other provisions of this Agreement, the Members hereby consent to the exercise by the Board of Managers of all such powers and rights conferred on the Members by the Delaware Act with respect to the management and control of the Company. Any vacancies in the position of any Manager shall be filled in accordance with Section 6.01.

(b) Without limiting the authority of the Board of Managers to act on behalf of the Company, the day-to-day business and operations of the Company may be overseen and implemented by officers of the Company (each, an "**Officer**" and collectively, the "**Officers**"), subject to the limitations imposed by the Board of Managers. An Officer may, but need not, be a Member. Each Officer shall be appointed by the Board of Managers. Any one Person may hold more than one office. Subject to the other provisions of this Agreement, the salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Board of Managers, subject to any applicable employment agreement. The authority and responsibility of the Officers shall be limited to such duties as the Board of Managers may, from time to time, delegate to them. Unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation formed under the General Corporation Law of the State of Delaware, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. All Officers shall be, and shall be deemed to be, officers and employees of the Company. An Officer may also perform one or more roles as an officer of the Board of Managers. Any Officer may be removed at any time, with or without cause, by the Board of Managers.

(c) Subject to the other provisions of this Agreement, and only with the prior written consent of the Corporation, the Board of Managers shall have the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Company (including the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, consolidation, conversion, division, reorganization or other combination of the Company with or into another entity, for the avoidance of doubt, without the prior consent of any Member or any other Person being required.

Section 6.03 Actions of the Managers. The Board of Managers may act through any Officer or other Person or Persons to whom authority and duties have been delegated pursuant to Section 6.06.

Section 6.04 Transactions Between the Company and the Managers. The Board of Managers may cause the Company to contract and deal with any of the Managers, or any Affiliate of any Manager; *provided* that, such contracts and dealings (other than contracts and dealings between the Company and its Subsidiaries) are on terms comparable to and competitive with those available to the Company from others dealing at arm's length or are approved by the Members and otherwise are permitted by the Credit Agreements; *provided further* that, the foregoing shall in no way limit the Managers' rights under (c), 3.04, 3.05 or 3.10. The Members hereby approve each of the contracts or agreements between or among the Managers, the Company and their respective Affiliates entered into on or prior to the date of this Agreement in accordance with the Prior LLC Agreement or that the Board of Managers or the Corporate Board has approved in connection with the Recapitalization or the Business Combination as of the date of this Agreement.

Section 6.05 Reimbursement for Expenses. The Managers shall not be compensated for their services as a Manager of the Company except as expressly provided in this Agreement or any other agreement between the Company and any Manager.

Section 6.06 Limitation of Liability of Managers.

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, neither any Manager nor any of the Managers' Affiliates or Managers' officers, employees or other agents shall be liable to the Company, to any Member that is not a Manager or to any other Person bound by this Agreement for any act or omission performed or omitted by any Manager in its capacity as a managing member of the Company pursuant to authority granted to the Managers by this Agreement; *provided however* that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to any Manager's willful misconduct or knowing violation of Law or for any past, present or future material breaches of any representations, warranties or covenants by any Manager or its Affiliates contained herein. The Managers may exercise any of the powers granted to them by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and shall not be responsible for any misconduct or negligence on the part of any such agent (so long as such agent was selected in good faith and with reasonable care). Any Manager shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by any Manager in good faith reliance on such advice shall in no event subject any Manager to liability to the Company or any Member that is not a Manager.

(b) To the fullest extent permitted by applicable Law, whenever this Agreement or any other agreement contemplated herein provides that a Manager shall act in a manner which is, or provide terms which are, "fair and reasonable" to the Company or any Member that is not a Manager, such Manager shall determine such appropriate action or provide such terms considering, in each case, the relative interests of each party to such agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable United States generally accepted accounting practices or principles, notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise.

(c) To the fullest extent permitted by applicable Law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise, whenever in this Agreement or any other agreement contemplated herein, the Board of Managers is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, the Board of Managers shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company, other Members or any other Person.

(d) To the fullest extent permitted by applicable Law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement a Manager is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, such Manager shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, notwithstanding any provision of this Agreement or duty otherwise, existing at Law or in equity, and, notwithstanding anything contained herein to the contrary, so long as a Manager acts in good faith or in accordance with such other express standard, the resolution, action or terms so made, taken or provided by such Manager shall not constitute a breach of this Agreement or impose liability upon such Manager or any of such Manager's Affiliates and shall be deemed approved by all Members.

Section 6.07 Investment Company Act. The Board of Managers shall use their best efforts to ensure that the Company shall not be subject to registration as an investment company pursuant to the Investment Company Act.

Section 6.08 Election of Board. Following the date hereof, the Board shall be elected annually by the Members in accordance with this Section 6.08, and the Managers so elected to the Board shall serve as the Managers until a successor has been duly elected to the Board in accordance with this Section 6.08. Not more than one year after the later of (a) the date hereof and (b) the last meeting of the Members or action by written consent of the Members at which or pursuant to which the Managers were elected in accordance with this Section 6.08, the Board at such time (or the Members if the Board shall fail to take such action) shall either (i) call and hold a meeting of the Members for purposes of electing the Managers or (ii) seek written consents from the requisite Members to elect the Managers. A Person shall be elected as a Manager if the election of such Manager is approved by Members holding a majority of the Units outstanding by vote at a meeting held for such purpose or by action by written consent; provided, however, that if the Person so elected as a Manager was not a Manager immediately prior to such election, such election shall not be effective, and such Person shall not become a Manager, unless and until such Person has executed and delivered to the Company the written agreement of such Person to be bound by the terms of this LLC Agreement applicable to the Managers, in form and substance reasonably satisfactory to the Managers serving immediately prior to such election or to the Members holding a majority of the outstanding Units. Each Member hereby irrevocably agrees, in connection with each such meeting of the Members or written consent contemplated by this Section 6.08, to vote for such Managers as follows: (I) with respect to the PubCo Managers (as determined pursuant to Section 6.01(a)), as designated by the Corporation prior to such meeting or written consent, and (II) with respect to the Non-PubCo Managers (as determined pursuant to Section 6.01(a)), the applicable number of the Non-PubCo Managers as designated by the holders of a majority of the Common Units then outstanding held by Members other than the Corporation and its wholly-owned Subsidiaries.

Section 6.09 Resignation or Removal of Managers; Vacancy. A Manager may resign as a Manager at any time and may be removed at any time, with or without cause, by the Members entitled to designate such Manager pursuant to Section 6.01(a). Any vacancy on the Board may be filled by the Corporation until the next annual meeting or vote of the Members contemplated by Section 3.01(c)(iii).

ARTICLE VII
RIGHTS AND OBLIGATIONS OF MEMBERS AND MANAGERS

Section 7.01 Limitation of Liability and Duties of Members.

(a) Except as provided in this Agreement or in the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member or Manager shall be obligated personally for any such debts, obligations, contracts or liabilities of the Company solely by reason of being a Member or Manager (except to the extent and under the circumstances set forth in any non-waivable provision of the Delaware Act). Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable Law, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

(b) In accordance with the Delaware Act and the laws of the State of Delaware, a Member may, under certain circumstances, be required to return amounts previously distributed to such Member. It is the intent of the Members that no Distribution to any Member pursuant to Article IV or Article XIV shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or Distribution of any such property to a Member shall be deemed to be a compromise within the meaning of Section 18-502(b) of the Delaware Act, and, to the fullest extent permitted by Law, any Member receiving any such money or property shall not be required to return any such money or property to the Company or any other Person, unless such distribution was made by the Company to its Members in clerical error. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member.

(c) To the fullest extent permitted by applicable Law, including Section 18-1101(c) of the Delaware Act, and notwithstanding any other provision of this Agreement (but subject, and without limitation, to Section 6.01(k) and Section 6.06 with respect to a Manager) or in any agreement contemplated herein or applicable provisions of Law or equity or otherwise, the parties hereto hereby agree that to the extent that any Member (other than a Manager in its capacity as such) (or any Member's Affiliate or any manager, managing member, general partner, director, officer, employee, agent, fiduciary or trustee of any Member or of any Affiliate of a Member) has duties in such Member's capacity as such (including fiduciary duties) to the Company, to a Manager, to another Member, to any Person who acquires an interest in a Unit or to any other Person bound by this Agreement, all such duties (including fiduciary duties) are hereby eliminated, to the fullest extent permitted by law, and replaced with the duties or standards expressly set forth herein, if any; provided, however, that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. The elimination of duties of a Member in such Member's capacity as such (including fiduciary duties) to the Company, a Manager, each of the other Members, each other Person who acquires an interest in a Unit and each other Person bound by this Agreement and replacement thereof with the duties or standards expressly set forth herein, if any, are approved by the Company, the Board of Managers, each of the Members, each other Person who acquires an interest in a Unit and each other Person bound by this Agreement.

Section 7.02 Lack of Authority. No Member, other than any Member serving as Manager on the Board of Managers or a duly appointed Officer, in each case in its capacity as such, has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditure on behalf of the Company. The Members hereby consent to the exercise by the Board of Managers of the powers conferred on it by Law and this Agreement.

Section 7.03 No Right of Partition. No Member, other than any Member that is a Manager, shall have the right to seek or obtain partition by court decree or operation of Law of any property of the Company, or the right to own or use particular or individual assets of the Company.

Section 7.04 Indemnification.

(a) Subject to Section 5.08, the Company hereby agrees to indemnify and hold harmless any Person (each an “**Indemnified Person**”) to the fullest extent permitted under applicable Law, as the same now exists or may hereafter be amended, substituted or replaced (but, to the fullest extent permitted by Law, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorneys’ fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person’s Affiliates) by reason of the fact that such Person is or was a Member or an Affiliate thereof (other than as a result of an ownership interest in the Corporation) or is or was serving as a Manager or a director, officer, employee or other agent of the Board of Managers, or a director, manager, Officer, employee, Partnership Representative or other agent of the Company or is or was serving at the request of the Company as a manager, officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; *provided however* that, no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person’s or its Affiliates’ willful misconduct or knowing violation of Law or for any past, present or future breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates contained herein or in Other Agreements with the Company. Reasonable expenses, including out-of-pocket attorneys’ fees, incurred by any such Indemnified Person in defending a proceeding shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) The right to indemnification and the advancement of expenses conferred in this Section 7.04 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, bylaw, action by a Manager or otherwise.

(c) The Company shall maintain directors’ and officers’ liability insurance, or substantially equivalent insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in Section 7.04(a) whether or not the Company would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 7.04. The Company shall use its commercially reasonable efforts to purchase and maintain property, casualty and liability insurance in types and at levels customary for companies of similar size engaged in similar lines of business, as determined in good faith by the Board of Managers, and the Company shall use its commercially reasonable efforts to purchase directors’ and officers’ liability insurance (including employment practices coverage) with a carrier and in an amount determined necessary or desirable as determined in good faith by the Board of Managers.

(d) The indemnification and advancement of expenses provided for in this Section 7.04 shall be provided out of and to the extent of Company assets only. No Member (unless such Member otherwise agrees in writing or is found in a non-appealable decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company. The Company (i) shall be the primary indemnitor of first resort for such Indemnified Person pursuant to this Section 7.04 and (ii) shall be fully responsible for the advancement of all expenses and the payment of all damages or liabilities with respect to such Indemnified Person which are addressed by this Section 7.04.

(e) If this Section 7.04 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 7.04 to the fullest extent permitted by any applicable portion of this Section 7.04 that shall not have been invalidated and to the fullest extent permitted by applicable Law.

ARTICLE VIII
BOOKS, RECORDS, ACCOUNTING AND REPORTS, AFFIRMATIVE COVENANTS

Section 8.01 Records and Accounting. The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required pursuant to applicable Laws. All matters concerning (a) the determination of the relative amount of allocations and Distributions among the Members pursuant to Article IV and Article V and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Board of Managers, whose determination shall be final and conclusive as to all of the Members absent manifest clerical error.

Section 8.02 Fiscal Year. The Fiscal Year of the Company shall end on December 31 of each year or such other date as may be required or established by the Board of Managers.

ARTICLE IX
TAX MATTERS

Section 9.01 Preparation of Tax Returns. The Board of Managers shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company. The Board of Managers shall use reasonable efforts to furnish, as soon as practicable, and in any event not later than within 180 days of the close of each Taxable Year, to each Member a completed IRS Schedule K-1 (and any comparable state or local income tax form) and such other information as is reasonably requested by such Member relating to the Company that is necessary for such Member to comply with its tax reporting obligations. Subject to the terms and conditions of this Agreement and except as otherwise provided in this Agreement, in its capacity as Partnership Representative, the Corporation shall have the authority to prepare the tax returns of the Company using such permissible methods and elections as it determines in its reasonable discretion, including the use of any permissible method under Section 706 of the Code for purposes of determining the varying Units of its Members. Each Member shall furnish to the Company all pertinent information in its possession that is reasonably requested by the Company and is necessary to enable the Company's tax returns to be timely prepared and filed. Each Member further agrees that such Member shall not treat any Company item inconsistently on such Member's tax return with the treatment of the item on the Company's tax return or other information furnished to such Member relating to the Company for such Member to comply with its tax reporting obligations.

Section 9.02 Tax Elections. The Taxable Year shall be the Fiscal Year set forth in Section 8.02, unless otherwise required by Section 706 of the Code. The Board of Managers shall cause the Company and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes (but excluding any such Subsidiary to the extent it is directly or indirectly held by or through an entity treated as a corporation for U.S. federal, and applicable state and local, income tax purposes) to have in effect an election pursuant to Section 754 of the Code (or any similar provisions of applicable state, local or foreign tax Law) for each Taxable Year in which such election is relevant. The Board of Managers shall take commercially reasonable efforts to cause each Person in which the Company owns a direct or indirect equity interest (other than a Subsidiary and any Person that is directly or indirectly held by or through an entity treated as a corporation for U.S. federal, and applicable state and local, income tax purposes) that is so treated as a partnership to have in effect any such election for such Taxable Year. Each Member will upon request supply any information reasonably necessary to give proper effect to any such elections.

Section 9.03 Tax Controversies. The Board of Managers shall cause the Company to take all necessary actions required by Law to designate the Corporation (or any other Person selected by the Board of Managers) as the “tax matters partner” of the Company within the meaning of Section 6231 of the Code (as in effect prior to repeal of such section pursuant to the Revised Partnership Audit Provisions) with respect to any Taxable Year beginning on or before December 31, 2017 (and to the extent applicable for state and local tax purposes). The Board of Managers shall further cause the Company to take all necessary actions required by Law to designate the Corporation (or another Person selected by the Board of Managers), with respect to any Taxable Year of the Company beginning after December 31, 2017, as the “partnership representative” of the Company as provided in Section 6223(a) of the Code (and any similar provision of state, local and other Law), and if the “partnership representative” is an entity, the Board of Managers is hereby authorized to designate a “designated individual” in accordance with Treasury Regulations Section 301.6223-1(b)(3) (in such capacities, collectively, the “**Partnership Representative**”). The Company and the Members shall cooperate fully with each other and shall use reasonable best efforts to cause the Corporation (or such other Person selected by the Board of Managers, or its designated individual, as applicable) to become the Partnership Representative with respect to any taxable period of the Company with respect to which the statute of limitations has not yet expired (and causing any tax matters partner, partnership representative or designated individual designated prior to the Effective Date to resign, be revoked or replaced, as applicable), including (as applicable) by filing certifications pursuant to Treasury Regulations Section 301.6231(a)(7)-1(d) and completing IRS Form 8970 or any other form or certificate required pursuant to Treasury Regulations Section 301.6223-1(e)(1). The Partnership Representative shall have the right and obligation to take all actions authorized and required by the Code and other applicable tax Law for the Partnership Representative and is authorized and required to represent the Company (at the Company’s expense) in connection with all examinations of the Company’s affairs by tax authorities, including any resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and the Partnership Representative and to do or refrain from doing any or all things reasonably requested by the Company or the Partnership Representative with respect to the conduct of such proceedings. Without limiting the generality of the foregoing, with respect to any audit or other proceeding, the Partnership Representative shall be entitled to cause the Company (and any of its Subsidiaries) to make any available elections pursuant to Section 6226 of the Code (and similar provisions of state, local and other Law), and the Members shall cooperate to the extent reasonably requested by the Company in connection therewith. Each Member acknowledges that any action taken by the Partnership Representative in its capacity as such shall be binding upon such Member and that such Member shall not independently act with respect to any administrative or judicial proceeding affecting the Company. The Company shall reimburse the Partnership Representative for all reasonable out-of-pocket expenses incurred by the Partnership Representative, including reasonable fees of any professional attorneys, in carrying out its duties as the Partnership Representative. The provisions of this Article IX shall survive the transfer or termination of any Member’s interest in any Units of the Company, the termination of this Agreement and the dissolution, liquidation, winding up and termination of the Company, and shall remain binding on each Member for the period of time necessary to resolve all tax matters relating to the Company. With respect to any tax audit or other proceeding for any taxable year of the Company that ends prior to or includes the Effective Date, the Company shall make (and the Partnership Representative shall cause the Company to make) a “push out” election under Section 6226 of the Code (or any comparable provision of state, local, or non-U.S. law) to the extent available under applicable law.

ARTICLE X
RESTRICTIONS ON TRANSFER OF UNITS; CERTAIN TRANSACTIONS

Section 10.01 Transfers by Members. No holder of Units shall Transfer any interest in any Units, except Transfers (a) pursuant to and in accordance with Section 10.02 and 10.09 or (b) approved in advance and in writing by the Board of Managers (through a majority of the Managers who are disinterested), in the case of Transfers by any Member other than a Manager, or (c) in the case of Transfers by a Manager, to any Person who succeeds as a Manager in accordance with Section 6.01. Notwithstanding the foregoing, “**Transfer**” shall not include (i) an event that terminates the existence of a Member for income tax purposes (including a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, a sale of assets by, or liquidation of, a Member pursuant to an election under Sections 336 or 338 of the Code, or merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member), but that does not terminate the existence of such Member under applicable state Law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Units of such trust that is a Member) or (ii) any indirect Transfer of Units held by the Corporation by virtue of any Transfer of Equity Securities in the Corporation. The Board of Managers may, in their reasonable discretion, require a Transfer to comply with the requirements of Treasury Regulations Section 1.7704-1(e)(1)(vi) regarding “block transfers.”

Section 10.02 Permitted Transfers. The restrictions contained in Section 10.01 shall not apply to any of the following Transfers (each, a “**Permitted Transfer**” and each transferee, a “**Permitted Transferee**”): (a)(i) a Transfer pursuant to a Redemption or Direct Exchange in accordance with Article XI hereof or (ii) a Transfer by a Member to the Corporation or any of its Subsidiaries, or (b) a Transfer to an Affiliate of such Member or pursuant to applicable laws of descent and distribution or among such Member’s Family Group; *provided* that, (x) Units may not be Transferred to a Member’s spouse in connection with a divorce proceeding and (y) such Member retains exclusive voting control of the Units Transferred; *provided however* that, (1) the restrictions contained in this Agreement will continue to apply to Units after any Permitted Transfer of such Units, and (2) in the case of the foregoing clause (b), the Permitted Transferees of the Units so Transferred shall agree in writing to be bound by the provisions of this Agreement, and prior to such Transfer the transferor will deliver a written notice to the Company, which notice will disclose in reasonable detail the identity of the proposed Permitted Transferee. In the case of a Permitted Transfer of any Common Units by any Member that is authorized to hold Class B Common Stock in accordance with the Corporation’s certificate of incorporation to a Permitted Transferee in accordance with this Section 10.02, such Member (or any subsequent Permitted Transferee of such Member) shall also transfer a number of shares of Class B Common Stock or Class B Warrants, as applicable, equal to the number of Common Units (including Common Units underlying Class B Warrants) that were transferred by such Member (or subsequent Permitted Transferee) in the transaction to such Permitted Transferee. All Permitted Transfers are subject to the additional limitations set forth in Section 10.07(b).

Section 10.03 Legend. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or if an exemption from such registration is then available with respect to such sale. To the extent such Units have been certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED ON SEPTEMBER 20, 2023, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**ACT**”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF AMERICAN ONCOLOGY NETWORK, LLC, AS IT MAY BE AMENDED, RESTATED, AMENDED AND RESTATED, OR OTHERWISE MODIFIED FROM TIME TO TIME, AND AMERICAN ONCOLOGY NETWORK, LLC RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH CONDITIONS SHALL BE FURNISHED BY AMERICAN ONCOLOGY NETWORK, LLC TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.”

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any Units which cease to be Units in accordance with the definition thereof.

Section 10.04 Transfer. Prior to Transferring any Units, the Transferring holder of Units shall cause the prospective Permitted Transferee to be bound by this Agreement and any other agreements executed by the holders of Units and relating to such Units in the aggregate to which the transferor was a party (collectively, the “**Other Agreements**”) by executing and delivering to the Company counterparts of this Agreement and any applicable Other Agreements.

Section 10.05 Assignee's Rights.

(a) The Transfer of a Unit in accordance with this Agreement shall be effective as of the date of such Transfer (assuming compliance with all of the conditions to such Transfer set forth herein), and such Transfer shall be shown on the books and records of the Company. Profits, Losses and other items of the Company shall be allocated between the transferor and the transferee according to Section 706 of the Code, using any permissible method as determined in the reasonable discretion of the Board of Managers. Distributions made before the effective date of such Transfer shall be paid to the transferor, and Distributions made on or after such date shall be paid to the Assignee.

(b) Unless and until an Assignee becomes a Member pursuant to Article XII, the Assignee shall not be entitled to any of the rights granted to a Member hereunder or under applicable Law, other than the rights granted specifically to Assignees pursuant to this Agreement; *provided however* that, without relieving the Transferring Member from any such limitations or obligations as more fully described in Section 10.06, such Assignee shall be bound by any limitations and obligations of a Member contained herein by which a Member would be bound on account of the Assignee's Units (including the obligation to make Capital Contributions on account of such Units).

Section 10.06 Assignor's Rights and Obligations. Any Member who shall Transfer any Unit in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units and shall no longer have any rights or privileges, or, except as set forth in this Section 10.06, duties, liabilities or obligations, of a Member with respect to such Units or other interest (it being understood, however, that the applicable provisions of Section 6.07 and 7.04 shall continue to inure to such Person's benefit), except that unless and until the Assignee (if not already a Member) is admitted as a Substituted Member in accordance with the provisions of Article XII (the "**Admission Date**"), (a) such Transferring Member shall retain all of the duties, liabilities and obligations of a Member with respect to such Units, and (b) the Board of Managers may, in its sole discretion, reinstate all or any portion of the rights and privileges of such Member with respect to such Units for any period of time prior to the Admission Date. Nothing contained herein shall relieve any Member who Transfers any Units in the Company from any liability of such Member to the Company with respect to such Units that may exist as of the Admission Date or that is otherwise specified in the Delaware Act or for any liability to the Company or any other Person for any materially false statement made by such Member (in its capacity as such) or for any past, present or future breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the Other Agreements with the Company.

Section 10.07 Overriding Provisions.

(a) Any Transfer or attempted Transfer of any Units in violation of this Agreement (including any prohibited indirect Transfers) shall be, to the fullest extent permitted by applicable law, null and void *ab initio*, and the provisions of Section 10.05 and 10.06 shall not apply to any such Transfers. For the avoidance of doubt, any Person to whom a Transfer is made or attempted in violation of this Agreement shall not become a Member and shall not have any other rights in or with respect to any rights of a Member of the Company with respect to the applicable Units. The approval of any Transfer in any one or more instances shall not limit or waive the requirement for such approval in any other or future instance. The Board of Managers shall promptly amend the Schedule of Members to reflect any Permitted Transfer pursuant to this Article X.

(b) Notwithstanding anything contained herein to the contrary (including, for the avoidance of doubt, the provisions of Section 10.01 and Article XI and Article XII), in no event shall any Member Transfer any Units to the extent such Transfer would:

(i) result in the violation of the Securities Act, or any other applicable federal, state or foreign Laws;

(ii) cause an assignment under the Investment Company Act;

(iii) in the reasonable determination of the Board of Managers, be a violation of or a default (or an event that, with notice or the lapse of time or both, would constitute a default) under, or result in an acceleration of any obligation under any Credit Agreement to which the Company or the Corporation is a party; *provided* that, the payee or creditor to whom the Company or the Corporation owes such obligation is not an Affiliate of the Company or the Corporation;

(iv) be a Transfer to a Person who is not legally competent or who has not achieved his or her majority of age under applicable Law (excluding trusts for the benefit of minors);

(v) cause the Company to be treated as a “publicly traded partnership” or to be taxed as a corporation pursuant to Section 7704 of the Code or any successor provision thereto under the Code; or

(vi) result in the Company having more than 100 partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3)) in any Taxable Year that is not a Restricted Taxable Year or otherwise cause any Taxable Year that is not otherwise a Restricted Taxable Year to become a Restricted Taxable Year.

(c) Notwithstanding anything contained herein to the contrary, in no event shall any Member that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code Transfer any Units (including, for the avoidance of doubt, in connection with a Redemption or a Direct Exchange), unless such Member and the transferee have delivered to the Company, in respect of the relevant Transfer, written evidence that all required withholding under Section 1446(f) of the Code will have been done and duly remitted to the applicable taxing authority or duly executed certifications (prepared in accordance with the applicable Treasury Regulations or other authorities) of an exemption from such withholding.

Section 10.08 Spousal Consent. In connection with the execution and delivery of this Agreement, any Member who is a natural person will deliver to the Company an executed consent from such Member’s spouse (if any) in the form of Exhibit B-1 attached hereto or a Member’s spouse confirmation of separate property in the form of Exhibit B-2 attached hereto. If, at any time subsequent to the date of this Agreement such Member becomes legally married (whether in the first instance or to a different spouse), such Member shall cause his or her spouse to execute and deliver to the Company a consent in the form of Exhibit B-1 or Exhibit B-2 attached hereto. Such Member’s non-delivery to the Company of an executed consent in the form of Exhibit B-1 or Exhibit B-2 at any time shall constitute such Member’s continuing representation and warranty that such Member is not legally married as of such date.

Section 10.09 Certain Transactions with respect to the Corporation.

(a) In connection with a Change of Control Transaction, the Board of Managers shall have the right, in its sole discretion, to require each Member (other than the Corporation and its Subsidiaries) to effect a Redemption of all or a portion of such Member's Common Units together with an equal number of shares of Class B Common Stock or such number Class B Warrants, pursuant to which such Common Units and such shares of Class B Common Stock or such Class B Warrants will be exchanged for shares of Class A Common Stock (or economically equivalent cash or securities of a successor entity), *mutatis mutandis*, in accordance with the Redemption provisions of Article XI (applied for this purpose as if the Corporation had delivered an Election Notice that specified a Share Settlement with respect to such Redemption) and otherwise in accordance with this Section 10.09(a) (it being understood that the Corporation may elect a Direct Exchange in connection with the foregoing, and the remaining provisions of this Section 10.09(a) shall apply, *mutatis mutandis*, with respect to such Direct Exchange). Any such Redemption pursuant to this Section 10.09(a) shall be effective immediately prior to the consummation of such Change of Control Transaction (and, for the avoidance of doubt, shall be contingent upon the consummation of such Change of Control Transaction and shall not be effective if such Change of Control Transaction is not consummated) (the date of such Redemption pursuant to this Section 10.09(a), the "**Change of Control Date**"). From and after the Change of Control Date, (i) the Common Units and any shares of Class B Common Stock or any such Class B Warrants subject to such Redemption shall be deemed to be transferred to the Corporation on the Change of Control Date and (ii) each such Member shall cease to have any rights with respect to the Units and any shares of Class B Common Stock or such Class B Common Warrants subject to such Redemption (other than the right to receive shares of Class A Common Stock (or economically equivalent cash or equity securities in a successor entity) pursuant to such Redemption). In the event the Board of Managers desires to initiate the provisions of this Section 10.09, the Board of Managers shall provide written notice of an expected Change of Control Transaction to all Members within the earlier of (x) five Business Days following the execution of an agreement with respect to such Change of Control Transaction and (y) ten Business Days before the proposed date upon which the contemplated Change of Control Transaction is to be effected, including in such notice such information as may reasonably describe the Change of Control Transaction, subject to Law, including the date of execution of such agreement or such proposed effective date, as applicable, the amount and types of consideration to be paid for shares of Class A Common Stock in the Change of Control Transaction and any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with a Change of Control Transaction (which election shall be available to each Member on the same terms as holders of shares of Class A Common Stock). Following delivery of such notice and on or prior to the Change of Control Date, the Members shall take all actions reasonably requested by the Corporation to effect such Redemption in accordance with the terms of Article XI, including taking any action and delivering any document required pursuant to this Section 10.09(a) to effect such Redemption. Notwithstanding the foregoing, in the event the Board of Managers requires the Members to exchange less than all of their outstanding Common Units (and to surrender a corresponding number of shares of Class B Common Stock for cancellation or such number of Class B Common Warrants), each Member's participation in the Change of Control Transaction shall be reduced *pro rata*.

(b) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization, or similar transaction with respect to Class A Common Stock (a “**Pubco Offer**”) is proposed by the Corporation or is proposed to the Corporation or its stockholders and approved by the Corporate Board or is otherwise effected or to be effected with the consent or approval of the Corporate Board, the Board of Managers shall provide written notice of the Pubco Offer to all Members within the earlier of (i) five Business Days following the execution of an agreement (if applicable) with respect to, or the commencement of (if applicable), such Pubco Offer and (ii) ten Business Days before the proposed date upon which the Pubco Offer is to be effected, including in such notice such information as may reasonably describe the Pubco Offer, subject to Law, including the date of execution of such agreement (if applicable) or of such commencement (if applicable), the material terms of such Pubco Offer, including the amount and types of consideration to be received by holders of shares of Class A Common Stock in the Pubco Offer, any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with such Pubco Offer, and the number of Units (and the corresponding shares of Class B Common Stock or such Class B Warrants) held by such Member that is applicable to such Pubco Offer. The Members (other than the Corporation) shall be permitted to participate in such Pubco Offer by delivering a written notice of participation that is effective immediately prior to the consummation of such Pubco Offer (and that is contingent upon consummation of such offer), and shall include such information necessary for consummation of such offer as requested by the Corporation. In the case of any Pubco Offer that was initially proposed by the Corporation, (x) the Corporation shall use reasonable best efforts to enable and permit the Members (other than the Corporation) to participate in such transaction to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock, and to enable such Members to participate in such transaction without being required to exchange Units or shares of Class B Common Stock or such Class B Warrants prior to the consummation of such transaction and (y) to the extent that the Members (other than the Corporation) choose to participate in such transaction, then such Members shall take all actions reasonably necessary to effectuate their participation in such transaction, including, without limitation, exercising their respective Redemption Rights. For the avoidance of doubt, in no event shall Members be entitled to receive in such Pubco Offer aggregate consideration for each Common Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer.

(c) In the event that a transaction or proposed transaction constitutes both a Change of Control Transaction and a Pubco Offer, the provisions of Section 10.09(a) shall take precedence over the provisions of Section 10.09(b) with respect to such transaction, and the provisions of Section 10.09(b) shall be subordinate to provisions of Section 10.09(a), and may only be triggered if the Board of Managers elects to waive the provisions of Section 10.09(a).

Section 10.10 Unvested Common Units. With respect to any shares of Class B Common Stock corresponding to Common Units which remain subject to vesting conditions in accordance with any applicable Equity Plan or Individual Award Agreement, the Member holding such shares of Class B Common Stock shall abstain from voting any such shares of Class B Common Stock with respect to any matter to be voted on or considered by the stockholders of the Corporation at any annual or special meeting of the stockholders of the Corporation or action by written consent of the stockholders of the Corporation unless and until such time as such Common Units have vested in accordance with the applicable Equity Plan or Individual Award Agreement.

ARTICLE XI
REDEMPTION AND DIRECT EXCHANGE RIGHTS

Section 11.01 Redemption Right of a Member.

(a) Subject to the terms and conditions in this Section 11.01 hereof (including, without limitation, the limitations set forth in Section 11.01(a)(iv)), each Member (other than the Corporation and its Subsidiaries) shall be entitled to cause the Company to redeem (a “**Redemption**”) all or any portion of its Common Units (excluding, for the avoidance of doubt, any Common Units that the Transfer of which is prohibited pursuant to Section 10.07(b) or Section 10.07(c) of this Agreement) in whole or in part (the “**Redemption Right**”) at any time and from time to time following the earlier of (x) the date that is the six (6)-month anniversary of the Closing Date and (y) the date after the closing on which the Corporation consummates a Change of Control Transaction that results in all of the Corporation’s stockholders having the right to exchange their Class A Common Stock for cash, securities or other property. A Member desiring to exercise its Redemption Right (each, a “**Redeeming Member**”) shall exercise such right by giving written notice (the “**Redemption Notice**”) to the Company with a copy to the Corporation. The Redemption Notice shall specify the number of Common Units (the “**Redeemed Units**”) that the Redeeming Member intends to have the Company redeem and a date, not less than three Business Days nor more than ten Business Days after delivery of such Redemption Notice (unless and to the extent that the Board of Managers in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the “Redemption Date”); provided that, the Company, the Corporation and the Redeeming Member may change the number of Redeemed Units or the Redemption Date specified in such Redemption Notice to another number or date by mutual agreement signed in writing by each of them; *provided, further*, that in the event the Redemption Date occurs in a Restricted Taxable Year, the Redemption Date must be a Quarterly Redemption Date not less than sixty (60) days after delivery of the applicable Redemption Notice. Subject to Section 11.03 and unless the Redeeming Member timely has delivered a Retraction Notice as provided in Section 11.01(c) or has revoked or delayed a Redemption as provided in Section 11.01(d), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date):

(i) the Redeeming Member shall Transfer and surrender, free and clear of all liens and encumbrances (x) the Redeemed Units to the Company (including any certificates representing the Redeemed Units if they are certificated), and (y) a number of shares of Class B Common Stock or a number of Class B Common Warrants (together with any Corresponding Rights) equal to the number of Redeemed Units to the Corporation;

(ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 11.01(b), and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 11.01(a) and the Redeemed Units;

(iii) the Corporation shall cancel and retire for no consideration the shares of Class B Common Stock or a number of Class B Warrants (together with any Corresponding Rights) that were Transferred to the Corporation pursuant to Section 11.01(a)(i)(y), above; and

(iv) *Limitation on Beneficial Ownership.* Notwithstanding anything to the contrary contained herein, the Company shall not effect any Redemption (other than a Redemption pursuant to Section 11.07 hereof), and any Electing Redeeming Member shall not have the right to any Redemption, pursuant to the terms and conditions of this Section 11.01 and any such Redemption shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, such Electing Redeeming Member together with the other Attribution Parties collectively would beneficially own a number of shares of Class A Common Stock in excess of the Maximum Percentage. The “**Maximum Percentage**” shall be set at 4.99% of the number of shares of the Class A Common Stock outstanding immediately after giving effect to the issuance of shares of Class A Common Stock pursuant to such Redemption (to the extent permitted pursuant to this Section 11.01(a)(iv)), such 4.99% subject to adjustment for the Combined A+B Proviso (as defined below). For purposes of the foregoing sentence, the aggregate number of shares of Class A Common Stock beneficially owned by the Electing Redeeming Member shall include the number of shares of Class A Common Stock beneficially owned by the Electing Redeeming Member, plus the number of shares of Class A Common Stock issuable upon Redemption by the Electing Redeeming Member that would result in the Electing Redeeming Member holding the Maximum Percentage of the number of outstanding shares of Class A Common Stock. Furthermore, to the extent the Electing Redeeming Member or its Attribution Parties beneficially own Class B Common Stock or Class B Warrants, the Maximum Percentage shall be automatically adjusted from time to time such that the Electing Redeeming Member’s beneficial ownership of the Company’s Class A Common Stock issuable pursuant to such Redemption (to the extent permitted pursuant to this Section 11.01(a)(iv)), when combined with Class B Common Stock beneficially owned by the Electing Redeeming Member (taking into account any limitation on conversion or exercise of any convertible security analogous to the limitation contained in this Section 11.01(a)(iv)) on an aggregated basis shall not exceed 4.99% of the Class A Common Stock and Class B Common Stock on an aggregated basis outstanding immediately after giving effect to the issuance of shares of Class A Common Stock pursuant to such Redemption (to the extent permitted pursuant to this Section 11.01(a)(iv)) (the foregoing collectively, the “**Combined A+B Proviso**”). For purposes of this Section 11.01(a)(iv), beneficial ownership shall be calculated in accordance with 1934 Act. For purposes of this Section 11.01(a)(iv), in determining the number of outstanding shares of Class A Common Stock the Electing Redeeming Member may acquire upon a Redemption, without exceeding the Maximum Percentage, the Electing Redeeming Member may rely on the number of outstanding shares of Class A Common Stock and Class B Common Stock as reflected, if applicable, in (x) the Corporation’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q and Current Reports on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Corporation or (z) any other written notice by the Company or the Corporation, including as may be requested by the Electing Redeeming Member in writing, which the Company or the Corporation shall promptly provide, setting forth the number of shares of Class A Common Stock or Class B Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives a Redemption Notice from the Electing Redeeming Member at a time when the actual number of outstanding shares of Class A Common Stock or Class B Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Electing Redeeming Member in writing of the number of shares of Class A Common Stock or Class B Common Stock then outstanding and, to the extent that such Redemption Notice would otherwise cause the Electing Redeeming Member’s beneficial ownership, as determined pursuant to this Section 11.01(a)(iv), to exceed the Maximum Percentage, the Electing Redeeming Member shall notify the Company of a reduced number of Redeemed Units to be redeemed pursuant to such Redemption Notice. In the event that the issuance of Class A Common Stock to the Electing Redeeming Member results in the Electing Redeeming Member and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Class A Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Electing Redeeming Member and the other Attribution Parties’ aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio, and the Electing Redeeming Member shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return any Common Units and shares of Class A Common Stock tendered by the Electing Redeeming Member corresponding to the Excess Shares, and the Electing Redeeming Member shall transfer the Excess Shares 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 11.01(a)(iv) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 11.01(a)(iv) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived. By written notice to the Company, the Electing Redeeming Member may from time to time increase or decrease the Maximum Percentage applicable to the Electing Redeeming Member to any other percentage; provided that any increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company.

(b) The Corporation shall have the option (as determined solely by the Corporate Board), as provided in Section 11.02, to elect to have the Redeemed Units be redeemed in consideration for either a Share Settlement or a Cash Settlement; *provided* that, for the avoidance of doubt, the Corporation may elect to have the Redeemed Units be redeemed in consideration for a Cash Settlement solely in connection with the Corporation's completion of a substantially concurrent public offering or private sale of shares of Class A Common Stock within ten (10) Business Days of the delivery of a Redemption Notice. For the avoidance of doubt, the Company shall have no obligation to effect a Cash Settlement that exceeds the cash raised by the Corporation from the Corporation's offering or sale of shares of Class A Common Stock referenced in this Section 11.01(b). The Corporation shall give written notice (the "**Election Notice**") to the Company (with a copy to the applicable Redeeming Member) of such election within two Business Days of receiving the Redemption Notice; *provided* that, if the Corporation does not timely deliver an Election Notice, the Corporation shall be deemed to have elected the Share Settlement method. If the Corporation elects a Share Settlement (including in connection with a Direct Exchange pursuant to Section 11.03), the Corporation shall deliver or cause to be delivered the number of shares of Class A Common Stock deliverable upon such Share Settlement as promptly as practicable (but not later than three Business Days) after the Redemption Date, at the offices of the then-acting registrar and transfer agent of the shares of Class A Common Stock (or, if there is no then-acting registrar and transfer agent of Class A Common Stock, at the principal executive offices of the Corporation), registered in the name of the relevant Redeeming Member (or in such other name as is requested in writing by the Redeeming Member), in certificated or uncertificated form, as determined by the Corporation; *provided* that, to the extent the shares of Class A Common Stock are settled through the facilities of The Depository Trust Company, upon the written instruction of the Redeeming Member set forth in the Redemption Notice, the Corporation shall use its commercially reasonable efforts to deliver the shares of Class A Common Stock deliverable to such Redeeming Member through the facilities of The Depository Trust Company, to the account of the participant of The Depository Trust Company designated by such Redeeming Member by no later than the close of business on the Business Day immediately following the Redemption Date.

(c) In the event the Corporation elects the Cash Settlement in connection with a Redemption, the Redeeming Member may retract its Redemption Notice by giving written notice (the "**Retraction Notice**") to the Company (with a copy to the Corporation) within three Business Days of delivery of the Election Notice. The timely delivery of a Retraction Notice shall terminate all of the Redeeming Member's, the Company's and the Corporation's rights and obligations under this Section 11.01 arising from the Redemption Notice.

(d) In the event the Corporation elects a Share Settlement in connection with a Redemption, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists:

(i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective;

(ii) the Corporation shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption;

(iii) the Corporation shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption;

(iv) the Redeeming Member is in possession of any material non-public information concerning the Corporation, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and the Corporation does not permit disclosure of such information);

(v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC;

(vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded;

(vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Entity that restrains or prohibits the Redemption;

(viii) the Corporation shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such Redemption pursuant to an effective registration statement; or

(ix) the Redemption Date would occur three Business Days or less prior to, or during, a Black-Out Period.

If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 11.01(d), the Redemption Date shall occur on the fifth Business Day following the date on which the condition(s) giving rise to such delay cease to exist (or such earlier day as the Corporation, the Company and such Redeeming Member may agree in writing).

(e) The number of shares of Class A Common Stock (or Redeemed Units Equivalent, if applicable) (together with any Corresponding Rights) applicable to any Share Settlement or Cash Settlement shall not be adjusted on account of any Distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; *provided however* that, if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any Distribution with respect to the Redeemed Units but prior to payment of such Distribution, the Redeeming Member shall be entitled to receive such Distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member Transferred and surrendered the Redeemed Units to the Company prior to such date; *provided, further*, that, a Redeeming Member shall be entitled to receive any and all Tax Distributions that such Redeeming Member otherwise would have received in respect of income allocated to such Member for the portion of any Taxable Year irrespective of whether such Tax Distribution(s) are declared or made after the Redemption Date.

(f) In the case of a Share Settlement, in the event a reclassification or other similar transaction occurs following delivery of a Redemption Notice, but prior to the Redemption Date, as a result of which shares of Class A Common Stock are converted into another security, then a Redeeming Member shall be entitled to receive the amount of such other security (and, if applicable, any Corresponding Rights) that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

(g) Notwithstanding anything to the contrary contained herein, neither the Company nor the Corporation shall be obligated to effectuate a Redemption if such Redemption could (as determined in the sole discretion of the Board of Managers) cause the Company to be treated as a “publicly traded partnership” or to be taxed as a corporation pursuant to Section 7704 of the Code or successor provisions of the Code.

Section 11.02 Election and Contribution of the Corporation. Unless the Redeeming Member has timely delivered a Retraction Notice as provided in Section 11.01(c), or has revoked or delayed a Redemption as provided in Section 11.01(d), subject to Section 11.03 on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date), (a) the Corporation shall make a Capital Contribution to the Company (in the form of the Share Settlement or the Cash Settlement, as determined by the Corporation in accordance with Section 11.01(b)) and (b) the Company shall issue to the Corporation a number of Common Units equal to the number of Redeemed Units surrendered by the Redeeming Member. Notwithstanding any other provisions of this Agreement to the contrary, but subject to Section 11.03, in the event that the Corporation elects a Cash Settlement, the Corporation shall only be obligated to contribute to the Company an amount in respect of such Cash Settlement equal to the Redeemed Units Equivalent with respect to such Cash Settlement, which in no event shall exceed the amount actually paid by the Company to the Redeeming Member as the Cash Settlement. The timely delivery of a Retraction Notice shall terminate all of the Company’s and the Corporation’s rights and obligations under this Section 11.02 arising from the Redemption Notice.

Section 11.03 Direct Exchange Right of the Corporation.

(a) Notwithstanding anything to the contrary in this Article XI (save for the limitations set forth in Section 11.01(b) regarding the Corporation’s option to select the Share Settlement or the Cash Settlement, and without limitation to the rights of the Members under Section 11.01, including the right to revoke a Redemption Notice), the Corporation may, in its sole and absolute discretion (as determined solely by a majority of its directors who are disinterested) (subject to the timing limitations set forth on such discretion in Section 11.01(b)), elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement or the Cash Settlement, as the case may be, through a direct exchange of such Redeemed Units and the Share Settlement or the Cash Settlement, as applicable, between the Redeeming Member and the Corporation (a “**Direct Exchange**”) (rather than contributing the Share Settlement or the Cash Settlement, as the case may be, to the Company in accordance with Section 11.02 for purposes of the Company redeeming the Redeemed Units from the Redeeming Member in consideration of the Share Settlement or the Cash Settlement, as applicable). Upon such Direct Exchange pursuant to this Section 11.03, the Corporation shall acquire the Redeemed Units and shall be treated for all purposes of this Agreement as the owner of such Units.

(b) The Corporation may, at any time prior to a Redemption Date (including after delivery of an Election Notice pursuant to Section 11.01(b)), deliver written notice (an “**Exchange Election Notice**”) to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; *provided* that, such election is subject to the limitations set forth in Section 11.01(b) and does not unreasonably prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by the Corporation at any time; *provided* that, any such revocation does not unreasonably prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all of the Redeemed Units that would have otherwise been subject to a Redemption.

(c) Except as otherwise provided by this Section 11.03, a Direct Exchange shall be consummated pursuant to the same timeframe as the relevant Redemption would have been consummated if the Corporation had not delivered an Exchange Election Notice and as follows:

(i) the Redeeming Member shall transfer and surrender, free and clear of all liens and encumbrances (x) the Redeemed Units and (y) a number of shares of Class B Common Stock (together with any Corresponding Rights) equal to the number of Redeemed Units, or a number of Class B Common Warrants (together with any Corresponding Rights) equal to the number of Redeemed Units, to the extent applicable, in each case, to the Corporation;

(ii) the Corporation shall (x) issue or pay to the Redeeming Member the Share Settlement or the Cash Settlement, as applicable, and (y) cancel and retire for no consideration the shares of Class B Common Stock or Class B Warrants (together with any Corresponding Rights) that were Transferred to the Corporation pursuant to Section 11.03(c)(i)(y) above; and

(iii) the Company shall (x) register the Corporation as the owner of the Redeemed Units and (y) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to Section 11.03(c)(i)(x) and the Redeemed Units, and issue to the Corporation a certificate for the number of Redeemed Units.

Section 11.04 Reservation of shares of Class A Common Stock; Listing; Certificate of the Corporation.

(a) At all times the Corporation shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Share Settlement in connection with a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Share Settlement pursuant to a Redemption or Direct Exchange; *provided* that, nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such Share Settlement pursuant to a Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of the Corporation) or by way of Cash Settlement. The Corporation shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Share Settlement pursuant to a Redemption or Direct Exchange to the extent a registration statement is effective and available with respect to such shares; *provided* that, all such unregistered shares of Class A Common Stock (if any) shall be entitled to the registration rights set forth in the Registration Rights Agreement if the holders thereof are party to the Registration Rights Agreement and have such rights thereunder. The Corporation shall use its reasonable best efforts to list the Class A Common Stock required to be delivered upon any such Share Settlement pursuant to a Redemption or Direct Exchange prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock are listed at the time of such Share Settlement pursuant to a Redemption or Direct Exchange (it being understood that any such shares may be subject to transfer restrictions under applicable securities Laws). The Corporation covenants that all shares of Class A Common Stock issued in connection with a Share Settlement pursuant to a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article XI shall be interpreted and applied in a manner consistent with any corresponding provisions of the Corporation's certificate of incorporation (if any).

(b) Prior to any Redemption or Direct Exchange effected pursuant to this Agreement, the Corporation shall take all such steps as may be required to cause to qualify for exemption under Rule 16b-3(d) or (e), as applicable, under the Exchange Act, and to be exempt for purposes of Section 16(b) under the Exchange Act, any acquisitions from, or dispositions to, the Corporation of equity securities of the Corporation (including derivative securities with respect thereto) and any securities that may be deemed to be equity securities or derivative securities of the Corporation for such purposes that result from the transactions contemplated by this Agreement, by each officer or director of the Corporation, including any director by deputization. The authorizing resolutions shall be approved by either the Corporate Board or a committee thereof composed solely of two or more Non-Employee Directors (as defined in Rule 16b-3) of the Corporation with the authorizing resolutions specifying the name of each such director whose acquisition or disposition of securities is to be exempted and the number of securities that may be acquired and disposed of by each such Person pursuant to this Agreement.

Section 11.05 Effect of Exercise of Redemption or Direct Exchange. This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange by a Member and all rights set forth herein shall continue in effect with respect to the remaining Members and, to the extent the Redeeming Member has a remaining Unit following such Redemption or Direct Exchange, the Redeeming Member. No Redemption or Direct Exchange shall relieve a Redeeming Member, the Company or the Corporation of any prior breach of this Agreement by such Redeeming Member, the Company or the Corporation.

Section 11.06 Tax Treatment. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree that a Redemption or a Direct Exchange, as the case may be, shall be treated as a direct exchange between the Corporation and the Redeeming Member for U.S. federal and applicable state and local income tax purposes. The Redeeming Member shall reasonably cooperate with the Company and the Corporation in connection with any Redemption or Direct Exchange to ensure that the requirements of Sections 1445 and 1446(f) of the Code or successor provisions of the Code are satisfied (as determined by the Corporation) prior to the Redemption Date.

Section 11.07 Redemption Limitations. The Board of Managers may require that any Member (or group of Members) redeem all of its (or their) Units pursuant to the Redemption Right to the extent the Board of Managers determines that such Redemption is necessary or appropriate to avoid undue risk that the Company may be classified as a “publicly traded partnership” within the meaning of Section 7704 of the Code. Upon delivery of any notice by the Board to such Member (or group of Members) requiring such Redemption, such Member (or group of Members) shall exchange, subject to exercise by the Corporation (or such other member(s) of the Corporation designated by the Corporation) of its option to elect to have the Redeemed Units be redeemed in consideration for a Cash Settlement pursuant to Section 11.01(b), all of its (or their) Units effective as of the date specified in such notice (and such date shall be deemed to be a Redemption Date for purposes of this Agreement) in accordance with this Section 11.07 and otherwise in accordance with the requirements set forth in such notice.

ARTICLE XII
ADMISSION OF MEMBERS

Section 12.01 Substituted Members. Subject to the provisions of Article X hereof, in connection with the Permitted Transfer of a Unit hereunder, the Permitted Transferee shall become a Substituted Member on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such admission shall be shown on the books and records of the Company, including the Schedule of Members.

Section 12.02 Additional Members. Subject to the provisions of Article X hereof, any Person that is not a Member as of the Effective Date may be admitted to the Company as an additional Member (any such Person, an “**Additional Member**”) only upon furnishing to the Board of Managers (a) duly executed Joinder and counterparts to any applicable Other Agreements and (b) such other documents or instruments as may be reasonably necessary or appropriate to effect such Person’s admission as a Member (including entering into such documents as may reasonably be requested by the Board of Managers). Such admission shall become effective on the date on which the Board of Managers determines in its sole discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Company, including the Schedule of Members.

ARTICLE XIII
WITHDRAWAL AND RESIGNATION; TERMINATION OF RIGHTS

Section 13.01 Withdrawal and Resignation of Members. Except in the event of Transfers pursuant to Section 10.06 and any Manager’s right to resign pursuant to Section 6.01, no Member shall have the power or right to withdraw or otherwise resign as a Member from the Company prior to the dissolution and winding up of the Company pursuant to Article XIV. Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Company without the prior written consent of the Board of Managers upon or following the dissolution and winding up of the Company pursuant to Article XIV, but prior to such Member receiving the full amount of Distributions from the Company to which such Member is entitled pursuant to Article XIV, shall be liable to the Company for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member. Upon a Transfer of all of a Member’s Units in a Transfer permitted by this Agreement, subject to the provisions of Section 10.06, such Member shall cease to be a Member.

ARTICLE XIV
DISSOLUTION AND LIQUIDATION

Section 14.01 Dissolution. The Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal, removal, dissolution, bankruptcy or resignation of a Member. The Company shall dissolve, and its affairs shall be wound up, upon a "**Liquidating Event**"):

- (a) the decision of the Board of Managers and the Corporation;
- (b) a dissolution of the Company under Section 18-801(4) of the Delaware Act, unless the Company is continued without dissolution pursuant thereto;
- (c) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act; or
- (d) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act.

Except as otherwise set forth in this Article XIV, the Company is intended to have perpetual existence. An Event of Withdrawal shall not in and of itself cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement.

Section 14.02 Winding up. Subject to Section 14.05, on dissolution of the Company, the Board of Managers shall act as liquidating trustee or may appoint one or more Persons as liquidating trustee (each such Person, a "**Liquidator**"). The Liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as an expense of the Company. Until final distribution, the Liquidators shall, to the fullest extent permitted by applicable Law, continue to operate the properties of the Company with all of the power and authority of the Board of Managers. The steps to be accomplished by the Liquidators are as follows:

- (a) as promptly as possible after dissolution and again after final liquidation, the Liquidators shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;
- (b) the Liquidators shall pay, satisfy or discharge from the Company's funds, or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent, conditional and unmatured liabilities in such amount and for such term as the liquidators may reasonably determine) the following: first, all of the debts, liabilities and obligations of the Company owed to creditors other than the Members in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof), including all expenses incurred in connection with the liquidations; and second, all of the debts, liabilities and obligations of the Company owed to the Members (other than any payments or distributions owed to such Members in their capacity as Members pursuant to this Agreement); and

(c) all remaining assets of the Company shall be distributed:

(i) to the Series A Preferred Units an amount equal to the greater of (A) the Series A Preferred Applicable Percentage of the Series A Preferred Accrued Value per Series A Preferred Unit and (B) the amount that such Member would have been entitled to receive if all of such Member's Series A Preferred Units were converted into Common Units in a Series A Preferred Conversion immediately prior to such liquidation, winding up or dissolution of the Company (regardless of whether the Series A Preferred Unit is then convertible pursuant to the terms hereof) (the "**Series A Liquidation Value**"); and

(ii) the balance to the Members, pro rata in proportion to their respective Common Units.

(d) The distribution of cash and/or property to the Members in accordance with the provisions of this Section 14.02 and Section 14.03 shall constitute a complete return to the Members of their Capital Contributions, a complete distribution to the Members of their interest in the Company and all of the Company's property and shall constitute a compromise to which all Members have consented within the meaning of the Delaware Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

Section 14.03 Deferment; Distribution in Kind. Notwithstanding the provisions of Section 14.02, but subject to the order of priorities set forth therein, if upon dissolution of the Company the Liquidators determine that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss (or would otherwise not be beneficial) to the Members, the Liquidators may, in their sole discretion and the fullest extent permitted by applicable Law, defer for a reasonable time the liquidation of any assets except those necessary to satisfy the Company's liabilities (other than loans to the Company by any Member(s) and reserves. Subject to the order of priorities set forth in Section 14.02, the Liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining assets in-kind of the Company in accordance with the provisions of Section 14.02(c), (b) as tenants in common and in accordance with the provisions of Section 14.02(c), undivided interests in all or any portion of such assets of the Company or (c) a combination of the foregoing. Any such Distributions in-kind shall be subject to (y) such conditions relating to the disposition and management of such assets as the Liquidators deem reasonable and equitable and (z) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any assets of the Company distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Article V. The Liquidators shall determine the Fair Market Value of any property distributed.

Section 14.04 Cancellation of Certificate. On completion of the winding up of the Company as provided herein, the Board of Managers (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation of the Certificate with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that should be canceled and take such other actions as may be necessary to terminate the existence of the Company. The Company shall continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 14.04.

Section 14.05 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 14.02 and Section 14.03 in order to minimize any losses otherwise attendant upon such winding up.

Section 14.06 Return of Capital. The Liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from assets of the Company).

ARTICLE XV
GENERAL PROVISIONS

Section 15.01 Power of Attorney.

(a) Each Member hereby constitutes and appoints the Board of Managers (or the Liquidator, if applicable) with full power of substitution, as his or her true and lawful agent and attorney-in-fact, with full power and authority in his, her or its name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) this Agreement, all certificates and other instruments and all amendments thereof which the Board of Managers deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments which the Board of Managers deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (C) all conveyances and other instruments or documents which the Board of Managers deems appropriate or necessary to reflect the dissolution, winding up and termination of the Company pursuant to the terms of this Agreement, including a certificate of cancellation; and (D) all instruments relating to the admission, substitution or resignation of any Member pursuant to Article XII or Article XIII; and

(ii) sign, execute, swear to and acknowledge all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the reasonable judgment of the Board of Managers, to evidence, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Members hereunder or is consistent with the terms of this Agreement, in the reasonable judgment of the Board of Managers, to effectuate the terms of this Agreement.

(b) The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member and the transfer of all or any portion of his, her or its Units and shall extend to such Member's heirs, successors, assigns and personal representatives.

Section 15.02 Confidentiality.

(a) Each of the Members (other than the Corporation) agrees that, without limiting the applicability of any other agreement to which any Member may be subject, no Member shall directly or indirectly disclose or use (other than solely for the purpose of such Member monitoring and analyzing such Member's investment made herein) at any time, including use for commercial or proprietary advantage or profit (other than for the benefit of the Company), either during his, her or its association or employment with the Company or thereafter, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft. "**Confidential Information**" as used herein includes all nonpublic information concerning the Company or its Subsidiaries including, but not limited to, ideas, business strategies, innovations and materials, all aspects of the Company's business plan, proposed operation and products, operating practices and methods, corporate structure, financial and organizational information, analyses, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, designs, employees and their identities, equity ownership, the methods and means by which the Company plans to conduct its business, all trade secrets, trademarks, tradenames and all intellectual property associated with the Company's business. With respect to each Member, Confidential Information does not include information or material that: (i) is rightfully in the possession of such Member at the time of disclosure by the Company; (ii) before or after it has been disclosed to such Member by the Company, becomes part of public knowledge, not as a result of any action or inaction of such Member in violation of this Agreement; or (iii) is approved for release by written authorization of the Corporate Board or the Board of Managers, or any other officer designated by the Board of Managers.

(b) Notwithstanding the foregoing, a Member may disclose Confidential Information to the extent (i) the disclosure is necessary for the Member or the Company's employees, agents, representatives and advisors to fulfill their duties to the Company pursuant to this Agreement or other written agreements or (ii) the disclosure is required by Law, court order, subpoena or legal process or to comply with the requirements of a state or federal regulatory authority.

(c) Upon expiration or other termination of a Member's interest in the Company, that Member may not take any of the Confidential Information, and that Member shall promptly return to the Company all Confidential Information in that Member's possession or control.

(d) The Company will pay operational expenses of the Corporation as may be requested from time to time by the Corporation.

Section 15.03 Amendments.

(a) Except as otherwise contemplated by this Agreement, this Agreement may be amended or modified upon the written consent of the Board of Managers and the Corporation, together with the written consent of the holders of a majority of the Units then outstanding.

(b) Notwithstanding the foregoing, no amendment or modification:

(i) to Section 6.01 may be made without the written consent of (x) the Board of Managers, (y) the Majority Members, and (z) the Corporation;

(ii) to any of the terms and conditions of this Agreement which terms and conditions expressly require the approval or action of certain Persons may be made without obtaining the consent of the requisite number or specified percentage of such Persons who are entitled to approve or take action on such matter; and

(iii) to any of the terms and conditions of this Agreement which would (i) reduce the amounts distributable to a Member pursuant to Article IV and XIV in a manner that is not *pro rata* with respect to all Members, (ii) increase the liabilities of such Member hereunder, (iii) otherwise adversely affect a holder of Units (with respect to such Units) in a manner disproportionate to any other holder of Units of the same class or series (with respect to such Units) (other than amendments, modifications and waivers necessary to implement the provisions of Article XII) or (iv) adversely affect the rights of any Member under Section 7.01 or Section 7.04 or Article X or Article XI, shall be effective against such affected Member or holder of Units, as the case may be, without the prior written consent of the holders a majority of such affected Units, as the case may be.

(c) Notwithstanding any of the foregoing, the Board of Managers may make any amendment (i) of an administrative nature that is necessary in order to implement the substantive provisions hereof, without the consent of any other Member; *provided* that, any such amendment does not adversely change the rights of the Members hereunder in any respect, (ii) to reflect any changes to the Class A Common Stock or Class B Common Stock or the issuance of any other capital stock of the Corporation, (iii) to issue Units in accordance with Section 3.02(d), (iv) to the extent reasonably necessary or advisable to avoid the Company being treated as a “publicly traded partnership” or being taxed as a corporation pursuant to Section 7704 of the Code or any successor provision thereto under the Code or (v) in accordance with Section 5.08.

Section 15.04 Title to Company Assets. Company assets shall be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such assets of the Company or any portion thereof. The Company shall hold title to all of its property in the name of the Company and not in the name of any Member. All assets of the Company shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such assets is held. The Company’s credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

Section 15.05 Addresses and Notices. All notices and other communications to be given to any party hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered by hand, courier or overnight delivery service, or when received in the form of an electronic transmission (receipt confirmation requested), and shall be directed to the address set forth, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the Company or the sending party.

(a) To the Company:

American Oncology Network, LLC
9160 Forum Corporate Parkway, Suite 350
Ft. Myers, Florida 33905
Attn: Erica Mallon, Senior Corporate Counsel
Email: erica.mallon@aoncology.com

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Ilan Katz and Brian Lee
Email: ilan.katz@dentons.com and brian.lee@dentons.com

(b) To the Corporation:

American Oncology Network, LLC
9160 Forum Corporate Parkway, Suite 350
Ft. Myers, Florida 33905
Attn: Erica Mallon, Senior Corporate Counsel
Email: erica.mallon@aoncology.com

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

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Ilan Katz and Brian Lee
Email: ilan.katz@dentons.com and brian.lee@dentons.com

(c) To the Members, as set forth on Schedule 2.

Section 15.06 Binding Effect; Intended Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.07 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Profits, Losses, Distributions, capital or property of the Company other than as a secured creditor.

Section 15.08 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 15.09 Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

Section 15.10 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any suit, dispute, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be heard in the state or federal courts of the State of Delaware, and the parties hereby consent to the exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such suit, action or proceeding and waives any objection to venue laid therein. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE SERVED ON ANY PARTY ANYWHERE IN THE WORLD, WHETHER WITHIN OR WITHOUT THE JURISDICTION OF ANY SUCH COURT (INCLUDING BY PREPAID CERTIFIED MAIL WITH A VALIDATED PROOF OF MAILING RECEIPT) AND SHALL HAVE THE SAME LEGAL FORCE AND EFFECT AS IF SERVED UPON SUCH PARTY PERSONALLY WITHIN THE STATE OF DELAWARE. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT SERVICE OF PROCESS UPON SUCH PARTY AT THE ADDRESS REFERRED TO IN SECTION 15.05 (INCLUDING BY PREPAID CERTIFIED MAIL WITH A VALIDATED PROOF OF MAILING RECEIPT), TOGETHER WITH WRITTEN NOTICE OF SUCH SERVICE TO SUCH PARTY, SHALL BE DEEMED EFFECTIVE SERVICE OF PROCESS UPON SUCH PARTY.

Section 15.11 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 15.12 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.13 Execution and Delivery by Electronic Signature and Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby or entered into by the Company in accordance herewith, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic signature or electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic signature or electronic transmission to execute or deliver a document or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

Section 15.14 Right of Offset. Whenever the Company or the Corporation is to pay any sum (other than pursuant to Article IV) to any Member, any amounts that such Member owes to the Company or the Corporation which are not the subject of a good faith dispute may be deducted from that sum before payment. For the avoidance of doubt, the distribution of Units to the Corporation shall not be subject to this Section 15.14.

Section 15.15 Entire Agreement. This Agreement, those documents expressly referred to herein, any indemnity agreements entered into in connection with the Prior LLC Agreement with any member of the board of directors at that time and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. For the avoidance of doubt, the Prior LLC Agreement is superseded by this Agreement as of the Effective Date and shall be of no further force and effect thereafter.

Section 15.16 Remedies. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any Law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by Law.

Section 15.17 Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word “including” in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the words “or,” “either” and “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Fourth Amended and Restated Limited Liability Company Agreement as of the date first written above.

COMPANY:

AMERICAN ONCOLOGY NETWORK, LLC

By: /s/ Todd Schonherz
Name: Todd Schonherz
Title: Chief Executive Officer

[Signature Page to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

SCHEDULE 1

SCHEDULE OF PRE-BUSINESS COMBINATION MEMBERS

[This exhibit has been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K under the Securities Act of 1933, as amended, because it is both (i) not material and (ii) the type of information that the Registrant treats as confidential. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.]

[Schedule 1 to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

SCHEDULE 2

SCHEDULE OF MEMBERS

[This exhibit has been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K under the Securities Act of 1933, as amended, because it is both (i) not material and (ii) the type of information that the Registrant treats as confidential. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.]

[Schedule 2 to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

SCHEDULE 3

INITIAL OFFICERS

- Todd Schonherz, Chief Executive Officer
- Dave Gould, Chief Financial Officer
- Stephen “Fred” Divers, Chief Medical Officer
- Erica Mallon, General Counsel

[Schedule 3 to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of [____], 20[___] (this "Joinder"), is delivered pursuant to that certain Fourth Amended and Restated Limited Liability Company Agreement, dated as of [____], [____] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Agreement") of American Oncology Network, LLC, a Delaware limited liability company (the "Company"), by and among the Company, American Oncology Network, Inc., a Delaware corporation and the managing member of the Company (the "Corporation"), and each of the Members from time to time party thereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Agreement.

1. Joinder to the Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to the Corporation, the undersigned hereby is admitted as and hereafter will be a Member under the Agreement and a party thereto, with all the rights, privileges and responsibilities of a Member thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the Agreement as if it had been a signatory thereto as of the date thereof.

2. Incorporation by Reference. All terms and conditions of the Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.

3. Address. All notices under the Agreement to the undersigned shall be direct to:

[Name]
[Address]
[City, State, Zip Code]
Attn:
Facsimile:
E-mail:

[Exhibit A to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

[NAME OF NEW MEMBER]

By: _____
Name: _____
Title: _____

Acknowledged and agreed
as of the date first set forth above:

AMERICAN ONCOLOGY NETWORK, LLC

By: American Oncology Network, Inc., its Managing Member

By: _____
Name: _____
Title: _____

[Exhibit A to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

FORM OF AGREEMENT AND CONSENT OF SPOUSE

The undersigned spouse of [_____] (the "Member"), a party to that certain Fourth Amended and Restated Limited Liability Company Agreement, dated as of [____], [____] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Agreement") of American Oncology Network, LLC, a Delaware limited liability company (the "Company"), by and among the Company, American Oncology Network, Inc., a Delaware corporation and the managing member of the Company, and each of the Members from time to time party thereto (capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Agreement), acknowledges on his or her own behalf that:

I have read the Agreement and understand its contents. I acknowledge and understand that under the Agreement, any interest I may have, community property or otherwise, in the Units owned by the Member is subject to the terms of the Agreement which include certain restrictions on Transfer.

I hereby consent to and approve the Agreement. I agree that said Units and any interest I may have, community property or otherwise, in such Units are subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement on said Units or any interest I may have, community property or otherwise, in said Units.

I hereby acknowledge that the meaning and legal consequences of the Agreement have been explained fully to me and are understood by me, and that I am signing this Agreement and consent without any duress and of free will.

Dated:

[NAME OF SPOUSE]

By: _____
Name: _____
Title: _____

[Exhibit B-1 to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

FORM OF SPOUSE'S CONFIRMATION OF SEPARATE PROPERTY

I, the undersigned, the spouse of [_____] (the "Member"), who is a party to that certain Fourth Amended and Restated Limited Liability Company Agreement, dated as of [____], [____] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Agreement") of American Oncology Network, LLC, a Delaware limited liability company (the "Company"), by and among the Company, American Oncology Network, Inc., a Delaware corporation and the managing member of the Company, and each of the Members from time to time party thereto (capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Agreement), acknowledge and confirm on that the Units owned by said Member are the sole and separate property of said Member, and I hereby disclaim any interest in same.

I hereby acknowledge that the meaning and legal consequences of this Member's spouse's confirmation of separate property have been fully explained to me and are understood by me, and that I am signing this Member's spouse's confirmation of separate property without any duress and of free will.

Dated:

[NAME OF NEW MEMBER]

By: _____
Name: _____
Title: _____

[Exhibit B-1 to Fourth Amended and Restated Limited Liability Company Agreement of American Oncology Network, LLC]

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
DIGITAL TRANSFORMATION OPPORTUNITIES CORP.**

September 20, 2023

Digital Transformation Opportunities Corp., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is “**Digital Transformation Opportunities Corp.**” The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 17, 2020 (the “**Original Certificate**”).
2. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on March 9, 2021 (the “**First Amended and Restated Certificate**”).
3. This Second Amended and Restated Certificate of Incorporation (the “**Amended and Restated Certificate**”), which both restates and amends the provisions of the First Amended and Restated Certificate, was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the “**DGCL**”), and by written consent of the Corporation’s stockholders in accordance with Section 228 of the DGCL.
4. This Amended and Restated Certificate shall become effective on the date of filing with the Secretary of State of Delaware (the “**Effective Time**”).
5. The text of the First Amended and Restated Certificate is hereby restated and amended in its entirety to read as follows:

**ARTICLE I
NAME**

The name of the corporation is American Oncology Network, Inc. (the “**Corporation**”).

**ARTICLE II
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE III
REGISTERED AGENT**

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE IV
CAPITALIZATION**

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock, each with a par value of \$0.0001 per share, which the Corporation is authorized to issue is 325,000,000 shares, consisting of (a) 300,000,000 shares of common stock (the “**Common Stock**”), including (i) 200,000,000 shares of Class A common stock (the “**Class A Common Stock**”) and (ii) 100,000,000 shares of Class B common stock (the “**Class B Common Stock**”), and (b) 25,000,000 shares of preferred stock (the “**Preferred Stock**”). The number of authorized shares of either Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares of such class then outstanding or, in the case of Common Stock, then necessary for issuance in connection with the exchange or redemption of Common Units (the “**Common Units**”) of American Oncology Network, LLC, a Delaware limited liability company (“**AON LLC**”) pursuant to Article 11 (an “**Exchange**”) of that certain Third Amended and Restated Limited Liability Company Agreement of AON LLC (the “**LLC Agreement**”) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of the Common Stock or Preferred Stock, as applicable, voting separately as a class shall be required therefor, unless a separate vote is required pursuant to any certificate of designation (a “**Preferred Stock Designation**”) filed pursuant to the DGCL.

Upon the Effective Time, each share of Class B Common Stock issued and outstanding immediately prior to the Effective Time shall be reclassified and changed into one issued and outstanding, fully paid and nonassessable share of Class A Common Stock, without any action required on the part of the Corporation or the holders thereof. Any stock certificate or book-entry position that immediately prior to the Effective Time represented shares of Class B Common Stock shall from and after the Effective Time be deemed to represent an equal number of shares of Class A Common Stock, without the need for surrender or exchange thereof.

Section 4.2 Preferred Stock. The Board of Directors of the Corporation (the “**Board**”) is hereby expressly authorized to provide out of the unissued shares of the Preferred Stock for one or more series of Preferred Stock and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, if any, designations, powers, preferences and relative, participating, optional, special and other rights, if any, of each such series and any qualifications, limitations and restrictions thereof, as shall be stated in the resolution or resolutions adopted by the Board providing for the issuance of such series and included in a Preferred Stock Designation, and the Board is hereby expressly vested with the authority to the full extent provided by law, now or hereafter, to adopt any such resolution or resolutions.

Section 4.3 Common Stock.

(a) *Voting.*

(i) Except as otherwise provided in this Amended and Restated Certificate or as required by applicable law, each holder of record of Class A Common Stock, as such, shall be entitled to one vote for each share of Class A Common Stock held of record as of the applicable record date by such holder on all matters on which stockholders generally are entitled to vote.

(ii) Except as otherwise provided in this Amended and Restated Certificate or as required by applicable law, each holder of record of Class B Common Stock, as such, shall be entitled to one vote for each share of Class B Common Stock held of record as of the applicable record date by such holder on all matters on which stockholders generally or holders of Class B Common Stock as a separate class are entitled to vote (whether voting separately as a class or together with one or more classes of the Corporation’s capital stock).

(iii) Except as otherwise provided in this Amended and Restated Certificate (including any Preferred Stock Designation) or required by applicable law, at any annual or special meeting of the stockholders of the Corporation, holders of the Class A Common Stock and holders of the Class B Common Stock, voting together as a single class, shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Amended and Restated Certificate (including any Preferred Stock Designation), holders of shares of any series of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock or other series of Common Stock if the holders of such affected series of Preferred Stock or Common Stock, as applicable, are entitled exclusively, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate (including any Preferred Stock Designation) or the DGCL.

(b) *Dividends and Distributions.*

(i) Class A Common Stock. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends and other distributions in cash, stock of any corporation or property of the Corporation, the holders of Class A Common Stock shall be entitled to receive ratably, taken together as a single class, in proportion to the number of shares held by each such stockholder such dividends and other distributions as may from time to time be declared by the Board in its discretion out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(ii) Class B Common Stock. Dividends and other distributions shall not be declared or paid on the Class B Common Stock.

(c) *Liquidation, Dissolution or Winding Up; Deemed Liquidation Events.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, or any Liquidation Event, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock having a preference over the Class B Common Stock as to distributions upon dissolution, liquidation, winding up or a Deemed Liquidation Event, the holders of shares of Class B Common Stock shall be entitled to receive \$0.0001 per share, and upon receiving such amount, such holders of shares of Class B Common Stock, as such, shall not be entitled to receive any other assets or funds of the Corporation. Thereafter, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. For purposes of this Amended and Restated Certificate, "Deemed Liquidation Event" shall mean (i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the shares of capital stock of the Corporation immediately prior to such consolidation, merger or reorganization continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; provided, that, for the purpose of this [Section 4.3\(c\)](#), all stock, options, warrants, purchase rights or other securities exercisable for or convertible into Common Stock outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of capital stock are converted or exchanged; (ii) any transaction or series of related transactions to which the Corporation is a party in which shares of the Corporation are transferred such that in excess of fifty percent (50%) of the Corporation's voting power is transferred; provided, that, an acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof; or (iii) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Corporation.

(d) *Cancellation of Class B Common Stock.* In the event that any outstanding share of Class B Common Stock shall cease to be held directly or indirectly by a holder of a Common Unit, as set forth in the books and records of AON LLC (including pursuant to an Exchange), such share shall automatically and without further action on the part of the Corporation or any holder of Class B Common Stock be transferred to the Corporation and cancelled for no consideration. The Corporation shall not issue additional shares of Class B Common Stock after the Effective Time other than in connection with the valid issuance of Common Units in accordance with the LLC Agreement, such that after such issuance of Class B Common Stock such holder of Common Units holds an identical number of Common Units and shares of Class B Common Stock.

(e) *Reservation of Stock.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock an amount equal to the number of then-outstanding Common Units subject to Exchange from time to time.

(f) *Splits.* If the Corporation at any time combines or subdivides (by any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Amended and Restated Certificate, scheme, arrangement or otherwise (each, a “*Split*”)) any series of Common Stock into a greater or lesser number of shares, the shares of each other series of Common Stock outstanding immediately prior to such combination or subdivision shall be proportionately similarly combined or subdivided such that the ratio of shares of Class B Common Stock to shares of outstanding Class A Common Stock immediately prior to such combination or subdivision shall be maintained immediately after such combination or subdivision; provided, that such actions with respect to the Class B Common Stock shall be subject to Sections 3.04 and 3.05 of the LLC Agreement. Any adjustment described in this [Section 4.3\(f\)](#) shall become effective at the close of business on the date the combination or subdivision becomes effective.

(g) *Restrictions on Transfers of Class B Common Stock.* A holder of Class B Common Stock may transfer or assign shares of Class B Common Stock (or any legal or beneficial interest in such shares) (directly or indirectly, including by operation of law) only to a Permitted Transferee (as defined in the LLC Agreement) of such holder, and only if such holder also simultaneously transfers an equal number of such holder’s Common Units to such Permitted Transferee in compliance with Article X of the LLC Agreement. Any purported transfer of shares of Class B Common Stock to any person other than a Permitted Transferee, or not accompanied by a simultaneous transfer of such holder’s Common Units to such Permitted Transferee in compliance with Article X of the LLC Agreement shall be null and void ab initio and shall not be recognized or given effect by the Corporation, the Corporation’s transfer agent or the Secretary of the Corporation.

Section 4.4 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; provided, however, that the consideration to be received for any shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

ARTICLE V BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. In addition to the powers and authority expressly conferred upon the Board by statute, this Amended and Restated Certificate or the Bylaws of the Corporation then in effect (the “**Bylaws**”), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders of the Corporation shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term.

(a) The number of directors of the Corporation shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Board, subject to any contractual rights of stockholders or any series of the Preferred Stock to elect directors.

(b) Subject to Section 5.5 hereof, the Board shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II and Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate; the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate; and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate, each of the successors elected to the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 5.5 hereof, if the number of directors that constitutes the Board is changed, any increase or decrease shall be apportioned by the Board among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board shorten the term of any incumbent director. Subject to any contractual rights of stockholders, in accordance with the DGCL, or the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board already in office to the aforesaid classes at the time this Amended and Restated Certificate (and therefore such classification) becomes effective in accordance with the DGCL.

(c) Subject to Section 5.5 hereof, a director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

(d) Unless and except to the extent that the Bylaws shall so require, the election of directors need not be by written ballot.

Section 5.3 Newly Created Directorships and Vacancies. Subject to Section 5.5 hereof and the contractual rights of any stockholder, in accordance with the DGCL, newly created directorships resulting from an increase in the number of directors and any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely and exclusively by a majority vote of the remaining directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders), and any director so chosen shall hold office for the remainder of the full term of the class of directors to which the new directorship was added or in which the vacancy occurred and until his or her successor has been elected and qualified, subject, however, to such director's earlier death, resignation, retirement, disqualification or removal.

Section 5.4 Removal. Subject to Section 5.5 hereof and the contractual rights of any stockholder, in accordance with the DGCL, any or all of the directors may be removed from office at any time, but only for cause and only by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 5.5 Preferred Stock - Directors. Notwithstanding any other provision of this *Article V*, and except as otherwise required by law, whenever the holders of one or more series of the Preferred Stock shall have the right, voting separately by class or series, to elect one or more directors, the term of office, the filling of vacancies, the removal from office and other features of such directorships shall be governed by the terms of such series of the Preferred Stock as set forth in this Amended and Restated Certificate (including any Preferred Stock Designation) and such directors shall not be included in any of the classes created pursuant to this *Article V* unless expressly provided by such terms.

ARTICLE VI BYLAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power and is expressly authorized to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Board shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Amended and Restated Certificate (including any Preferred Stock Designation), the affirmative vote of the holders of at least 66.7% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws; and provided further, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board that would have been valid if such Bylaws had not been adopted.

ARTICLE VII
MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Special Meetings. Subject to the rights, if any, of the holders of any outstanding series of the Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer of the Corporation, or the Board pursuant to a resolution adopted by a majority of the Board, and the ability of the stockholders of the Corporation to call a special meeting is hereby specifically denied. Except as provided in the foregoing sentence, special meetings of stockholders of the Corporation may not be called by another person or persons.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

Section 7.3 Action by Written Consent. Except as may be otherwise provided for or fixed pursuant to this Amended and Restated Certificate (including any Preferred Stock Designation) relating to the rights of the holders of any outstanding series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected by a duly called annual or special meeting of such stockholders and may not be effected by written consent of the stockholders.

ARTICLE VIII
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Limitation of Director Liability. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended unless they violated their duty of loyalty to the Corporation or its stockholders, acted in bad faith, knowingly or intentionally violated the law, authorized unlawful payments of dividends, unlawful stock purchases or unlawful redemptions, or derived improper personal benefit from their actions as directors. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

Section 8.2 Indemnification and Advancement of Expenses.

(a) To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**proceeding**") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "**indemnitee**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, Employee Retirement Income Security Act ("**ERISA**") excise taxes and penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) incurred by an indemnitee in defending or otherwise participating in any proceeding in advance of its final disposition; provided, however, that, solely to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the indemnitee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2(a), except for proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

(b) The rights to indemnification and advancement of expenses conferred on any indemnitee by this Section 8.2 shall not be exclusive of any other rights that any indemnitee may have or hereafter acquire under law, this Amended and Restated Certificate, the Bylaws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(c) Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Amended and Restated Certificate inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(d) This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than indemnitees.

ARTICLE IX CORPORATE OPPORTUNITY

To the extent allowed by law, the doctrine of corporate opportunity, or any other analogous doctrine, shall not apply with respect to the Corporation or any of its officers or directors, or any of their respective affiliates, in circumstances where the application of any such doctrine would conflict with any fiduciary duties or contractual obligations they may have as of the date of this Amended and Restated Certificate or in the future, and the Corporation renounces any expectancy that any of the directors or officers of the Corporation will offer any such corporate opportunity of which he or she may become aware to the Corporation, except, the doctrine of corporate opportunity shall apply with respect to any of the directors or officers of the Corporation only with respect to a corporate opportunity that was offered to such person solely in his or her capacity as a director or officer of the Corporation and (i) such opportunity is one the Corporation is legally and contractually permitted to undertake and would otherwise be reasonable for the Corporation to pursue and (ii) the director or officer is permitted to refer that opportunity to the Corporation without violating any legal obligation.

ARTICLE X
AMENDMENT OF AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force that may be added or inserted, in the manner now or hereafter prescribed by this Amended and Restated Certificate and the DGCL; and, except as set forth in *Article VIII*, all rights, preferences and privileges of whatever nature herein conferred upon stockholders, directors or any other persons by and pursuant to this Amended and Restated Certificate in its present form or as hereafter amended are granted subject to the right reserved in this *Article X*; provided, however, that Section 4.3(a)(iii) of this Amended and Restated Certificate may be amended only as provided therein.

ARTICLE XI
EXCLUSIVE FORUM FOR CERTAIN LAWSUITS

Section 11.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or this Amended and Restated Certificate or the Bylaws, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim (A) as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or (C) for which the Court of Chancery does not have subject matter jurisdiction. This exclusive forum provision will not apply to any action brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. If any action the subject matter of which is within the scope of this Section 11.1 is filed in a court other than a court located within the State of Delaware in the name of any stockholder, such stockholder shall be deemed to have consented to service of process on such stockholder's counsel. Additionally, unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts shall, to the fullest extent permitted by law, be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder.

Section 11.2 Severability. If any provision or provisions of this *Article XI* shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this *Article XI* (including, without limitation, each portion of any sentence of this *Article XI* containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this *Article XI*.

IN WITNESS WHEREOF, Digital Transformation Opportunities Corp. has caused this Amended and Restated Certificate to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

DIGITAL TRANSFORMATION OPPORTUNITIES CORP.

By: _____

Name: Kevin Nazemi

Title: Chief Executive Officer

[Signature Page to Second Amended and Restated Certificate of Incorporation]

**AMENDED AND RESTATED BYLAWS
OF
AMERICAN ONCOLOGY NETWORK, INC.**

(adopted on September 20, 2023)

ARTICLE I

OFFICES

Section 1.1. Registered Office. The registered office of American Oncology Network, Inc. (the “*Corporation*”) shall be fixed in the Corporation’s certificate of incorporation, as the same may be amended from time to time.

Section 1.2. Additional Offices. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the “*Board*”) may from time to time determine or as the business and affairs of the Corporation may require.

ARTICLE II

STOCKHOLDERS MEETINGS

Section 2.1. Annual Meetings. The annual meeting of stockholders shall be held at such place, either within or without the State of Delaware, and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). The Board acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders. For the purposes of these bylaws, the term “Whole Board” shall mean the total number of authorized directorships whether or not there exist any vacancies or other unfilled seats in previously authorized directorships.

Section 2.2. Special Meetings. Subject to the rights of the holders of any outstanding series of the Preferred Stock (as defined below) and to the requirements of applicable law, special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer (or any Co- Chief Executive Officer, if applicable), or the Board pursuant to a resolution adopted by a majority of the Board, and may not be called by any other person. Special meetings of stockholders shall be held at such place, either within or without the State of Delaware, and at such time and on such date as shall be determined by the Board and stated in the Corporation’s notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). The Board acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

Section 2.3. Notices. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

Section 2.4. Advance Notice Procedures.

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders may be made only (1) pursuant to the Corporation's notice of meeting (or any supplement thereto); (2) by or at the direction of the Board; (3) as may be provided in the certificate of designations for any class or series of preferred stock; or (4) by any stockholder of the Corporation who (A) is a stockholder of record at the time of giving of the notice contemplated by Section 2.4(a)(ii); (B) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting; (C) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting; (D) is a stockholder of record at the time of the annual meeting; and (E) complies with the procedures set forth in this Section 2.4(a).

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (4) of Section 2.4(a)(i), (A) the stockholder must have given timely notice in writing to the secretary and any such nomination or proposed business must constitute a proper matter for stockholder action, (B) the stockholder must have complied in all respects with the requirements of Regulation 14A under the Securities Exchange Act of 1934 (as amended and inclusive of rules and regulations thereunder, the "**1934 Act**") including, without limitation, the requirements of Rule 14a-19 (as such rule and regulations may be amended from time to time by the Securities and Exchange Commission ("**SEC**") including any SEC Staff interpretations relating thereto), and (C) the Board or an executive officer designated thereby shall determine that the stockholder has satisfied the requirements of this clause (ii), including without limitation the satisfaction of any undertaking delivered under paragraph (E) below. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the Corporation no earlier than 8:00 a.m., local time, on the 120th day and no later than 5:00 p.m., local time, on the 90th day prior to the day of the first anniversary of the preceding year's annual meeting of stockholders. However, if no annual meeting of stockholders was held in the preceding year, or if the date of the applicable annual meeting has been changed by more than 30 days from the first anniversary of the preceding year's annual meeting, then to be timely such notice must be received by the secretary at the principal executive offices of the Corporation no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the annual meeting and no later than the later of (x) 5:00 p.m., local time, on the 90th day before the meeting or (y) 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation. In no event will the adjournment, rescheduling or postponement of any annual meeting, or any announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. If the number of directors to be elected to the Board is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board at least 10 days before the last day that a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, then a stockholder's notice required by this Section 2.4(a)(ii) will also be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the secretary at the principal executive offices of the Corporation no later than 5:00 p.m., local time, on the 10th day following the day on which such public announcement is first made. "Public announcement" means disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(iii) A stockholder's notice to the secretary must set forth:

(1) as to each person whom the stockholder proposes to nominate for election as a director:

(A) such person's name, age, business address, residence address and principal occupation or employment; the class and number of shares of the Corporation that are held of record or are beneficially owned by such person and a description of any Derivative Instruments (defined below) held or beneficially owned thereby or of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of such person; and all information relating to such person that is required to be disclosed in solicitations of proxies for the contested election of directors, or is otherwise required, in each case pursuant to the Section 14 of the 1934 Act;

(B) such person's written consent to being named in such stockholder's proxy statement as a nominee of such stockholder and to serving as a director of the Corporation if elected;

(C) a reasonably detailed description of any direct or indirect compensatory, payment, indemnification or other financial agreement, arrangement or understanding that such person has, or has had within the past three years, with any person or entity other than the Corporation (including the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Corporation (a "**Third-Party Compensation Arrangement**");

(D) a description of any other material relationships between such person and such person's respective affiliates and associates, or others acting in concert with them, on the one hand, and such stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert with them, on the other hand;

(E) with respect to any director nominations, a written undertaking by the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made, by such beneficial owner, that such stockholder or beneficial owner will deliver to beneficial owners of shares representing at least 67% of the voting power of the stock entitled to vote generally in the election of directors either (x) at least 20 calendar days before the annual meeting, a copy of its definitive proxy statement for the solicitation of proxies for its director candidates, or (y) at least 40 calendar days before the annual meeting a Notice of Internet Availability of Proxy Materials that would satisfy the requirements of Rule 14a-16(d) of the 1934 Act;

(2) as to any other business that the stockholder proposes to bring before the annual meeting:

(A) a brief description of the business desired to be brought before the annual meeting;

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if applicable, the text of any proposed amendment to these bylaws or the Corporation's certificate of incorporation);

(C) the reasons for conducting such business at the annual meeting;

(D) any material interest in such business of such stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates and associates, or others acting in concert with them; and

(E) a description of all agreements, arrangements and understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates or associates or others acting in concert with them, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(3) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(A) the name and address of such stockholder (as they appear on the Corporation's books), of such beneficial owner and of their respective affiliates or associates or others acting in concert with them;

(B) for each class or series, the number of shares of stock of the Corporation that are, directly or indirectly, held of record or are beneficially owned by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;

(C) a description of any agreement, arrangement or understanding between such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, and any other person or persons (including, in each case, their names) in connection with the proposal of such nomination or other business;

(D) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Corporation's securities (any of the foregoing, a "Derivative Instrument"), or any other agreement, arrangement or understanding that has been made the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for or increase or decrease the voting power of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, with respect to the Corporation's securities;

(E) any rights to dividends on the Corporation's securities owned beneficially by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, that are separated or separable from the underlying security;

(F) any proportionate interest in the Corporation's securities or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership;

(G) any performance-related fees (other than an asset-based fee) that such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them is entitled to based on any increase or decrease in the value of the Corporation's securities or Derivative Instruments, including, without limitation, any such interests held by members of the immediate family of such persons sharing the same household;

(H) any significant equity interests or any Derivative Instruments in any principal competitor of the Corporation that are held by such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them;

(I) any direct or indirect interest of such stockholder, such beneficial owner or their respective affiliates or associates or others acting in concert with them, in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (in each case, including any employment agreement, collective bargaining agreement or consulting agreement);

(J) a representation and undertaking that the stockholder is a holder of record of stock of the Corporation as of the date of submission of the stockholder's notice and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;

(K) a representation and undertaking that such stockholder or any such beneficial owner intends, or is part of a group that intends, to (x) deliver a proxy statement or form of proxy to holders of at least the percentage of the voting power of the Corporation's then-outstanding stock required to approve or adopt the proposal or to elect each such nominee; or (y) otherwise solicit proxies from stockholders in support of such proposal or nomination;

(L) any other information relating to such stockholder, such beneficial owner, or their respective affiliates or associates or others acting in concert with them, or director nominee or proposed business that, in each case, would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee (in a contested election of directors) or proposal pursuant to Section 14 of the 1934 Act; and

(M) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

(iv) In addition to the requirements of this Section 2.4, to be timely, a stockholder's notice (and any additional information submitted to the Corporation in connection therewith) must further be updated and supplemented (1) if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the meeting and as of the date that is 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof and (2) to provide any additional information that the Corporation may reasonably request. Such update and supplement or additional information, if applicable, must be received by the secretary at the principal executive offices of the Corporation, in the case of a request for additional information, promptly following a request therefor, which response must be delivered not later than such reasonable time as is specified in any such request from the Corporation or, in the case of any other update or supplement of any information, not later than five business days after the record date(s) for the meeting (in the case of any update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date for the meeting or any adjournment, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment, rescheduling or postponement thereof). The failure to timely provide such update, supplement or additional information shall result in the nomination or proposal no longer being eligible for consideration at the meeting.

(b) Special Meetings of Stockholders. Except to the extent required by the DGCL, and subject to Section 2.3(a), special meetings of stockholders may be called only in accordance with the Corporation's certificate of incorporation and these bylaws. Only such business will be conducted at a special meeting of stockholders as has been brought before the special meeting pursuant to the Corporation's notice of meeting. If the election of directors is included as business to be brought before a special meeting in the Corporation's notice of meeting, then nominations of persons for election to the Board at such special meeting may be made by any stockholder who (i) is a stockholder of record at the time of giving of the notice contemplated by this Section 2.4(b); (ii) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the special meeting; (iii) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the special meeting; (iv) is a stockholder of record at the time of the special meeting; and (v) complies with the procedures set forth in this Section 2.4(b). For nominations to be properly brought by a stockholder before a special meeting pursuant to this Section 2.4(b), the stockholder's notice must be received by the secretary at the principal executive offices of the Corporation no earlier than 8:00 a.m., local time, on the 120th day prior to the day of the special meeting and no later than the later of (x) 5:00 p.m., local time, on the 90th day before the meeting or (y) 5:00 p.m., local time, on the 10th day following the day on which public announcement of the date of the special meeting was first made. In no event will any adjournment, rescheduling or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice. A stockholder's notice to the Secretary must comply with the applicable notice requirements of Section 2.4(a)(iii).

(c) Other Requirements.

(i) To be eligible to be a nominee by any stockholder for election as a director of the Corporation, the proposed nominee must provide to the secretary, in accordance with the applicable time periods prescribed for delivery of notice under Section 2.4(a)(ii) or Section 2.4(b):

(1) a signed and completed written questionnaire (in the form provided by the secretary at the written request of the nominating stockholder, which form will be provided by the secretary within 10 days of receiving such request) containing information regarding such nominee's background and qualifications and such other information as may reasonably be required by the Corporation to determine the eligibility of such nominee to serve as a director of the Corporation or to serve as an independent director of the Corporation;

(2) a written representation and undertaking that, unless previously disclosed to the Corporation, such nominee is not, and will not become, a party to any voting agreement, arrangement, commitment, assurance or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue;

(3) a written representation and undertaking that, unless previously disclosed to the Corporation, such nominee is not, and will not become, a party to any Third-Party Compensation Arrangement;

(4) a written representation and undertaking that, if elected as a director, such nominee would be in compliance, and will continue to comply, with the Corporation's corporate governance guidelines as disclosed on the Corporation's website, as amended from time to time; and

(5) a written representation and undertaking that such nominee, if elected, intends to serve a full term on the Board.

(ii) At the request of the Board, any person nominated by the Board for election as a director must furnish to the secretary the information that is required to be set forth in a stockholder's notice of nomination that pertains to such nominee.

(iii) No person will be eligible to be nominated by a stockholder for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.4. No business proposed by a stockholder will be conducted at a stockholder meeting except in accordance with this Section 2.4.

(iv) The chairperson of the applicable meeting of stockholders will, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these bylaws or that business was not properly brought before the meeting. If the chairperson of the meeting should so determine, then the chairperson of the meeting will so declare to the meeting and the defective nomination will be disregarded or such business will not be transacted, as the case may be.

(v) Notwithstanding anything to the contrary in this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear in person at the meeting to present a nomination or other proposed business, such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(vi) Without limiting this Section 2.4, a stockholder must also comply with all applicable requirements of the 1934 Act with respect to the matters set forth in this Section 2.4, it being understood that (1) any references in these bylaws to the 1934 Act are not intended to, and will not, limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.4; and (2) compliance with clause (4) of Section 2.4(a)(i) and with Section 2.4(b) are the exclusive means for a stockholder to make nominations or submit other business (other than as provided in Section 2.4(c)(vii)).

(vii) Notwithstanding anything to the contrary in this Section 2.4, the notice requirements set forth in these bylaws with respect to the proposal of any business pursuant to this Section 2.4 will be deemed to be satisfied by a stockholder if (1) such stockholder has submitted a proposal to the Corporation in compliance with Rule 14a-8 under the 1934 Act; and (2) such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for the meeting of stockholders. Subject to Rule 14a-8 and other applicable rules and regulations under the 1934 Act, nothing in these bylaws will be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation's proxy statement any nomination of a director or any other business proposal.

Section 2.5. Quorum. Except as otherwise provided by applicable law, the Corporation's Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**") or these Bylaws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders of the Corporation, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.7 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

Section 2.6. Voting of Shares.

(a) Voting Lists. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote at such meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order and showing the address and the number and class of shares registered in the name of each stockholder. Nothing contained in this Section 2.6(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.6(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxy holders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxy holder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority. No stockholder shall have cumulative voting rights.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("**Preferred Stock**"), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, at all meetings of stockholders at which a quorum is present, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters presented to the stockholders at a meeting at which a quorum is present shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these Bylaws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

Section 2.7. Adjournments. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 9.2, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.8. Conduct of Meetings. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer (or the Co-Chief Executive Officers, if applicable) or if the Chief Executive Officer (or the Co-Chief Executive Officers, if applicable) is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these Bylaws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.9. Consents in Lieu of Meeting.

Subject to the rights of holders of the Class B Common Stock of the Corporation or the preferred stock of the Corporation, as provided in the Certificate of Incorporation, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

ARTICLE III

DIRECTORS

Section 3.1. Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

Section 3.2. Number and Election. The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of a majority of the Whole Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

Section 3.3. Election, Qualification and Term of Office of Directors. Unless otherwise provided by the Certificate of Incorporation and subject to the special rights of holders of any series of Preferred Stock to elect directors, the Board shall be divided into three classes, designated as Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one third of the Whole Board. Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

Section 3.4. Resignation and Vacancies

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

(b) Unless otherwise provided in the certificate of incorporation or these bylaws or permitted in the specific case by resolution of the Board, and subject to the rights of holders of Preferred Stock, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and not by stockholders. If the directors are divided into classes, a person so chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

Section 3.5. Removal of Directors. Subject to the special rights of holders of any series of Preferred Stock to elect directors, any director or the entire Board may only be removed from office by stockholders of the Corporation in the manner specified in the certificate of incorporation and applicable law. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 3.6. Compensation. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors, including for service on a committee of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

ARTICLE IV

BOARD MEETINGS

Section 4.1. Annual Meetings. The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this [Section 4.1](#).

Section 4.2. Regular Meetings. Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places (within or without the State of Delaware) as shall from time to time be determined by the Board.

Section 4.3. Special Meetings. Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of the Whole Board, or the sole director, as the case may be, and shall be held at such time, date and place (within or without the State of Delaware) as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

Section 4.4. Quorum; Required Vote. A majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these Bylaws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 4.5. Consent In Lieu of Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 4.6. Organization. The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer (or the Co-Chief Executive Officers, if applicable) or if the Chief Executive Officer (or the Co-Chief Executive Officers, if applicable) is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 5.1. Establishment. The Board may by resolution of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required by the resolution designating such committee. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

Section 5.2. Available Powers. Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

Section 5.3. Alternate Members. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

Section 5.4. Procedures. Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these Bylaws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these Bylaws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article IV of these Bylaws.

ARTICLE VI

OFFICERS

Section 6.1. Officers. The officers of the Corporation elected by the Board shall be a Chief Executive Officer (or Co-Chief Executive Officers, if applicable), a Chief Financial Officer, a Secretary and such other officers (including without limitation, a Chairman, a Vice Chairman, a President, Vice Presidents, Assistant Secretaries, a Treasurer and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this ARTICLE VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these Bylaws or as may be prescribed by the Board or, if such officer has been appointed by the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board; Vice Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall have general supervision and control of the acquisition activities of the Corporation subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The powers and duties of the Chairman of the Board shall not include supervision or control of the preparation of the financial statements of the Corporation (other than through participation as a member of the Board). The positions of Chairman of the Board and Chief Executive Officer (or Co-Chief Executive Officer, if applicable) may be held by the same person. In the absence of the Chairman of the Board, the Vice Chairman shall be empowered to take any action that may be taken by the Chairman of the Board.

(b) Chief Executive Officer. The Chief Executive Officer (or the Co-Chief Executive Officers, if applicable) shall be the chief executive officer(s) of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board with respect to such matters, except to the extent any such powers and duties have been prescribed to the Chairman of the Board pursuant to Section 6.1(a) above. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The positions of Chief Executive Officer (or Co-Chief Executive Officer, if applicable) and President may be held by the same person.

(c) President. The President shall make recommendations to the Chief Executive Officer (or the Co- Chief Executive Officers, if applicable) on all operational matters that would normally be reserved for the final executive responsibility of the Chief Executive Officer (or the Co-Chief Executive Officers, if applicable). In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer (or the Co-Chief Executive Officers, if applicable), the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board. The President shall also perform such duties and have such powers as shall be designated by the Board. The positions of President and Chief Executive Officer (or Co-Chief Executive Officer, if applicable) may be held by the same person.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer (or any Co-Chief Executive Officer, if applicable) or the President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Chief Financial Officer. The Chief Financial Officer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation, which from time to time may come into the Chief Financial Officer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable) or the President may authorize).

(h) Treasurer. The Treasurer shall, in the absence (or inability or refusal to act) of the Chief Financial Officer, perform the duties and exercise the powers of the Chief Financial Officer.

Section 6.2. Term of Office; Removal; Vacancies. The elected officers of the Corporation shall be appointed by the Board and shall hold office until their successors are duly elected and qualified by the Board or until their earlier death, resignation, retirement, disqualification or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) or President may also be removed, with or without cause, by the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable) or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chief Executive Officer (or a Co-Chief Executive Officer, if applicable) or President may be filled by the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

Section 6.3. Other Officers. The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

Section 6.4. Multiple Officeholders; Stockholder and Director Officers. Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

ARTICLE VII

SHARES

Section 7.1. Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2. Multiple Classes of Stock. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

Section 7.3. Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer (or any Co- Chief Executive Officer, if applicable), the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.4. Consideration and Payment for Shares.

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or any benefit to the Corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities, or any combination thereof.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 7.5. Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.6. Transfer of Stock.

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 7.7. Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.8. Effect of the Corporation's Restriction on Transfer.

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice, offering circular or prospectus sent by the Corporation to the registered owner of such shares within a reasonable time prior to or after the issuance or transfer of such shares.

Section 7.9. Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VIII

INDEMNIFICATION

Section 8.1. Right to Indemnification. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "**proceeding**"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (hereinafter an "**Indemnitee**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines, Employment Retirement Income Security Act of 1974 excise taxes and penalties and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such proceeding; provided, however, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify an Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 8.2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 8.1, an Indemnitee shall also have the right to be paid by the Corporation to the fullest extent not prohibited by applicable law the expenses (including, without limitation, attorneys' fees) incurred in defending or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon the Corporation's receipt of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified under this Article VIII or otherwise.

Section 8.3. Right of Indemnitee to Bring Suit. If a claim under [Section 8.1](#) or [Section 8.2](#) is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by an Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final judicial decision from which there is no further right to appeal (hereinafter a “*final adjudication*”) that, the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, shall be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this [Article VIII](#) or otherwise shall be on the Corporation.

Section 8.4. Non-Exclusivity of Rights. The rights provided to any Indemnitee pursuant to this [Article VIII](#) shall not be exclusive of any other right, which such Indemnitee may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

Section 8.5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 8.6. Indemnification of Other Persons. This [Article VIII](#) shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Indemnitees. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this [Article VIII](#) with respect to the indemnification and advancement of expenses of Indemnitees under this [Article VIII](#).

Section 8.7. Amendments. Any repeal or amendment of this [Article VIII](#) by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this [Article VIII](#), will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Indemnitees on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision; provided however, that amendments or repeals of this Article VIII shall require the affirmative vote of the stockholders holding at least 66.7% of the voting power of all outstanding shares of capital stock of the Corporation.

Section 8.8. Certain Definitions. For purposes of this Article VIII, (a) references to “other enterprise” shall include any employee benefit plan; (b) references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “serving at the request of the Corporation” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interest of the Corporation” for purposes of Section 145 of the DGCL.

Section 8.9. Contract Rights. The rights provided to Indemnitees pursuant to this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Indemnitee’s heirs, executors and administrators.

Section 8.10. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Place of Meetings. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these Bylaws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

Section 9.2. Fixing Record Dates.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 9.2(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 9.3. Means of Giving Notice.

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director; (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation; (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation; (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation; (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation; or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "**Electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) **Exceptions to Notice Requirements.** Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 9.4. Waiver of Notice. Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these Bylaws, a written waiver of such notice, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.5. Meeting Attendance via Remote Communication Equipment.

(a) **Stockholder Meetings.** If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders entitled to vote at such meeting and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and, if entitled to vote, to vote on matters submitted to the applicable stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) **Board Meetings.** Unless otherwise restricted by applicable law, the Certificate of Incorporation or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 9.6. Dividends. The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

Section 9.7. Reserves. The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 9.8. Contracts and Negotiable Instruments. Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President, the Chief Financial Officer, the Treasurer or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President, the Chief Financial Officer, the Treasurer or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 9.9. Fiscal Year. The fiscal year of the Corporation shall be fixed by the Board.

Section 9.10. Seal. The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 9.11. Books and Records. The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

Section 9.12. Resignation. Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President or the Secretary. The resignation shall take effect at the time it is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.13. Surety Bonds. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

Section 9.14. Securities of Other Corporations. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer (or any Co-Chief Executive Officer, if applicable), the President, or any officers authorized by the Board. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

Section 9.15. Amendments. These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least 66.7% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the Corporation to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Section 3.1, Section 3.2, Section 3.4, Section 3.5, Article VIII, this 9.15 or Section 9.16 (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other bylaw). The Board shall also have the power to adopt, amend or repeal bylaws; provided, however, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

Section 9.16. Forum of Certain Actions.

(a) *Forum.* Unless a majority of the Whole Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), to the fullest extent permitted by law, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, these By-laws or the Certificate of Incorporation (in each case, as may be amended from time to time), (iv) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants. Unless a majority of the Board, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the federal district courts of the United States of America, to the fullest extent permitted by law, shall be the sole and exclusive forum for the resolution of any action asserting a cause of action arising under the Securities Act of 1933, as amended.

(b) *Personal Jurisdiction.* If any action the subject matter of which is within the scope of Section 1 of this Section 9.16 is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 1 of this Section 9.16 (an "Enforcement Action") and (b) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

(c) *Enforceability.* If any provision of this Section 9.16 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 9.16, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

(d) *Notice and Consent.* For the avoidance of doubt, any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.16.

**CERTIFICATE OF DESIGNATIONS OF
SERIES A PREFERRED STOCK
OF AMERICAN ONCOLOGY NETWORK, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

AMERICAN ONCOLOGY NETWORK, INC., a Delaware corporation, certifies that pursuant to the authority contained in Article Fourth of its Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors duly approved and adopted on September 20, 2023 the following resolution, which resolution remains in full force and effect on the date hereof:

RESOLVED, that a series of Preferred Stock, par value \$0.0001 per share, of the Company be, and hereby is, created, and that the designation and number of shares thereof and the voting and other powers, preferences, and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

1. DESIGNATION AND AMOUNT; RANKING.

(a) There shall be created from the 25,000,000 shares of preferred stock, par value \$0.0001 per share, of the Company authorized to be issued pursuant to the Certificate of Incorporation, a series of preferred stock, designated as the “Series A Preferred Stock,” par value \$0.0001 per share (the “**Preferred Stock**”), and the authorized number of shares of Preferred Stock shall be 10,000,000. Shares of the Preferred Stock that are redeemed, purchased or otherwise acquired by the Company, or converted into shares of Common Stock, shall be cancelled and shall revert to authorized but unissued shares of Preferred Stock.

(b) The Preferred Stock, with respect to dividend rights and rights upon the liquidation, winding-up or dissolution of the Company, ranks: (i) senior in all respects to all Junior Stock; (ii) on a parity, in all respects, with all Parity Stock; and (iii) junior in all respects to all Senior Stock, in each case as provided more fully herein.

2. DEFINITIONS.

As used herein, the following terms shall have the following meanings:

“**30-Day VWAP**” per share of Common Stock as of any date shall mean the per share volume-weighted average price as displayed on Bloomberg page “**DTOC**” (or its equivalent successor if such page is not available) in respect of the period from Opening of Business on the Trading Day that is 30 days preceding such date to Close of Business on the last Trading Day immediately preceding such date, or, if such price is not available, “**30-Day VWAP**” shall mean the market value per share of Common Stock for such period as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose.

“**Accrued Dividends**” shall mean, with respect to any share of Preferred Stock, as of any date of determination, the accrued and unpaid dividends on such share, whether or not declared, from, and including, the last day of the most recently preceding Dividend Period to, but not including, such date of determination, and including, for the sake of clarity, any then accrued and unpaid dividends on such share from a prior Dividend Period.

“**Accrued Value**” shall mean, with respect to each share of Preferred Stock, the Original Issue Price (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof) plus any Accrued Dividends on such share of Preferred Stock, in each case to the Conversion Date.

“Adjusted EBITDA” shall mean, for any period of determination (i) the sum, without duplication, of (a) net income, (b) interest expense, (c) income tax expense, (d) depreciation, (e) amortization, (f) other non-cash charges to net income (excluding (x) non-cash charges that represent an accrual or reserve for cash charges to be taken in the future and excluding any non-cash charge that relates to the write-down or write-off of inventory), and (g) one-time non-recurring or unusual expenses, including, without limitation, severance costs, lease termination costs, relocation costs, restructuring charges, and the first month acquisition loss for each new acquisition by any of the Company or any of its Subsidiaries, in each case of such expenses under this clause (g) incurred after the Effective Date, to the extent (x) reasonably acceptable to the Holder(s) and (y) that such expenses do not exceed \$6,500,000 in the aggregate for any four (4) consecutive fiscal quarter period, minus (ii) the sum of (a) non-cash credits to net income (excluding non-cash credits that represent an accrual or reserve for a future or potential future cash payment) and (b) one-time nonrecurring or unusual gains, in each case, for such period determined and consolidated in accordance with GAAP.

“Affiliate” shall have the meaning ascribed to it, on the date hereof, in Rule 405 under the Securities Act.

“AON LLC” shall have the meaning given in the Certificate of Incorporation.

“Applicable Percentage” shall mean a percentage equal to (a) one hundred twenty five percent (125%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event occurs on or prior to June 7, 2024, (b) one hundred twenty percent (120%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event occurs after June 7, 2024, but on or prior to June 7, 2025, (c) one hundred fifteen percent (115%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event occurs after June 7, 2025, but on or prior to June 7, 2026, (d) one hundred ten percent (110%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event after June 7, 2026, but on or prior to June 7, 2027, (e) one hundred five percent (105%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event occurs after June 7, 2027, but on or prior to June 7, 2028, (f) one hundred percent (100%) if a liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event occurs after June 7, 2028.

“Average VWAP” per share over a certain period shall mean the arithmetic average of the VWAP per share for each Trading Day in such period.

“Board of Directors” shall have the meaning given in the Certificate of Incorporation.

“Business Day” shall mean Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States of America or the State of Texas shall not be regarded as a Business Day.

“Cash Dividends” shall have the meaning set forth in Section 3(a).

“Certificate of Incorporation” shall mean the Certificate of Incorporation of the Company, as modified by this Certificate of Designations, as further amended or restated in accordance with applicable Law and this Certificate of Designations.

“Close of Business” shall mean 5:00 p.m. (New York time).

“Closing Sale Price” of the Common Stock shall mean, as of any date, the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional securities exchange, in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be an amount determined by the Board of Directors to be the fair market value of a share of Common Stock. If the Ex-Date for any distribution, the effective date for any subdivision, combination or reclassification or the Effective Date of any Pro Rata Repurchase (**“Adjustment Date”**) that requires (or, but for the second sentence of Section 6(e)(vi)(A) or Section 6(f), would have required) an adjustment to the Conversion Price pursuant to Section 6(e) occurs on or after the first Trading Day in the 10 Trading Day period used to calculate **“MP₀”** in the formula in Section 6(e)(vi)(B), the Closing Sale Price for each Trading Day prior to such Adjustment Date shall be adjusted by multiplying such Closing Sale Price by the same fraction by which the Conversion Price is so required (or would have been required) to be adjusted pursuant to Section 6(e) as a result of such event.

“**Common Stock**” shall mean the Class A common stock, par value \$0.0001 per share, of the Company, subject to Section 6(l).

“**Company**” shall mean American Oncology Network, Inc., a Delaware corporation.

“**Company Conversion Date**” shall have the meaning set forth in Section 6(b)(ii).

“**Company Conversion Notice**” shall have the meaning set forth in Section 6(b)(ii).

“**Company Conversion Notice Date**” shall have the meaning set forth in Section 6(b)(ii).

“**Conversion Date**” shall mean the Company Conversion Date or the Holder Conversion Date, as applicable.

“**Conversion Price**” shall initially be equal to \$10.00, subject to adjustment as provided herein.

“**Conversion Ratio**” shall mean, at any time, the quotient of the (a) Accrued Value at such time and (b) the Conversion Price at such time.

“**Deemed Liquidation Event**” shall mean (i) a merger or consolidation in which (a) the Company is a constituent party or (b) a Subsidiary is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation; provided, that, a Deemed Liquidation Event shall not include any such merger or consolidation involving the Company or a Subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or (ii) (a) the sale, in a single transaction or series of related transactions, by the Company or any Subsidiary of all or substantially all the assets of the Company and its Subsidiaries taken as a whole, or (b) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more Subsidiaries if substantially all of the assets of the Company and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries, except where such sale is to a wholly owned Subsidiary of the Company.

“**Dividend Payment Date**” shall mean the June 30 and December 31 of each year.

“**Dividend Period**” shall mean, with respect to the first “Dividend Period,” the period from and including the first date on which any Preferred Stock is issued, to and including the first Dividend Payment Date, and with respect to each subsequent “Dividend Period,” the period from but excluding a Dividend Payment Date to and including the next succeeding Dividend Payment Date or other date as of which accrued dividends are to be calculated.

“**Dividend Rate**” shall mean, as of the date of the determination, the rate per annum of 8.0%.

“Dividend Record Date” shall mean, with respect to the applicable Dividend Payment Date, the fifteenth day of the calendar month in which the applicable Dividend Payment Date falls or on such other date (which shall be a Business Day) set by the Board of Directors for the payment of dividends, which date shall be no earlier than 30 nor less than 10 days prior to such Dividend Payment Date.

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

“Ex-Date” shall mean when used with respect to any issuance of or distribution in respect of, the Common Stock or any other securities, shall mean the first date on which the Common Stock or such other securities trade without the right to receive such issuance or distribution.

“GAAP” means United States generally accepted accounting principles as from time to time in effect.

“Holder” and, unless the context requires otherwise, **“holder”** shall each mean a holder of record of a share of Preferred Stock.

“Holder Conversion Date” shall have the meaning set forth in Section 6(a).

“Holder Conversion Notice” shall have the meaning set forth in Section 6(a).

“Holder Conversion Notice Date” shall have the meaning set forth in Section 6(a).

“Issue Date” shall mean the original date of issuance of the Preferred Stock, which shall be the date that this Certificate of Designations is filed with the Secretary of State of the State of Delaware.

“Junior Stock” shall mean all classes of the Common Stock and each other class of capital stock or series of preferred stock established after the Issue Date, by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on a parity with the Preferred Stock as to liquidation preferences, redemption, distributions, dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“Law” means any statute, law (including common law and, for the avoidance of doubt, the HSR Act), rule, or regulation or any judgment, order, writ, injunction, or decree of any federal, state, local or foreign court or tribunal or any federal, state, local or foreign public, governmental, or regulatory body, agency, department, commission, board, bureau, or other authority or instrumentality.

“LLC Agreement” means the Fourth Amended and Restated Limited Liability Company Agreement of AON, dated September 20, 2023, as in effect immediately prior to the Issue Date.

“LLC Units” means the common limited liability interest of the Operating LLC.

“Market Value” shall mean the Average VWAP during a 10 consecutive Trading Day period ending on, and including, the Trading Day immediately prior to the date of determination. If the Ex-Date for any distribution, the effective date for any subdivision, combination or reclassification or the Effective Date of any Pro Rata Repurchase (**“Adjustment Date”**) that requires (or, but for the second sentence of Section 6(e)(iv)(A) or Section 6(f), would have required) an adjustment to the Conversion Price pursuant to Section 6(e) occurs on or after the first Trading Day in the 10 Trading Day period used to calculate Market Value for a date of determination, the VWAP for each Trading Day prior to such Adjustment Date shall be adjusted by multiplying such VWAP by the same fraction by which the Conversion Price is so required (or would have been required) to be adjusted pursuant to Section 6(e) as a result of such event.

“National Securities Exchange” shall mean an exchange registered with the SEC under Section 6(a) of the Exchange Act.

“Non-Cash Dividend Election” shall have the meaning set forth in Section 3(b).

“Officer” shall mean the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer, the Secretary or any Assistant Secretary of the Company.

“Opening of Business” shall mean 9:00 a.m. (New York time).

“Operating LLC” shall mean AON LLC.

“Original Issue Price” shall mean \$10.00 per share of Preferred Stock.

“Ownership Notice” shall mean the notice of ownership of capital stock of the Company containing the information required to be set forth or stated on certificates pursuant to the Delaware General Corporation Law and, in the case of an issuance of capital stock by the Company, in substantially the form attached hereto as **Exhibit A** or in such customary form used by the Transfer Agent.

“Parity Stock” shall mean any class of capital stock or series of preferred stock established on or after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on a parity with the Preferred Stock as to liquidation preferences, redemption, distributions, dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“Person” shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

“Preferred Stock” shall have the meaning set forth in Section 1(a).

“Pro Rata Repurchases” shall mean any purchase of shares of Common Stock by the Company or any Affiliate thereof pursuant to (i) any tender offer or exchange offer directed to all or substantially all of the holders of Common Stock subject to Section 13(e) or 14(e) of the Exchange Act or Regulation 14E promulgated thereunder or (ii) any other tender or exchange offer or other purchase available to substantially all holders of Common Stock, in the case of both (i) and (ii), whether for cash, shares of capital stock of the Company, other securities of the Company, evidences of indebtedness of the Company or any other Person or any other property (including shares of capital stock, other securities or evidences of indebtedness of a Subsidiary), or any combination thereof, effected while the Preferred Stock is outstanding. The **“Effective Date”** of a Pro Rata Repurchase shall mean the date of a purchase with respect to any Pro Rata Repurchase.

“Reference Property” shall have the meaning set forth in Section 6(l).

“Reorganization Event” shall have the meaning set forth in Section 6(l).

“SEC” shall mean the Securities and Exchange Commission.

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

“Senior Stock” shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

“**Subsidiary**” shall mean, as to any Person, any corporation or other entity of which (a) such Person or a subsidiary of such Person is a general partner or, in the case of a limited liability company, the managing member or manager thereof; (b) at least a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries; or (c) any corporation or other entity as to which such Person consolidates for accounting purposes. For the avoidance of doubt, for purposes of this Agreement, each of Operating LLC and its Subsidiaries shall be considered a Subsidiary of the Company.

“**Trading Day**” shall mean a day during which trading in securities generally occurs on the Nasdaq Global Select Market or, if the Common Stock is not listed on the Nasdaq Global Select Market, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock is not so listed or traded, “**Trading Day**” shall mean a Business Day.

“**Trading Market**” shall mean 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, the New York Stock Exchange (or any successors to any of the foregoing)

“**Transfer Agent**” shall mean American Stock Transfer & Trust Company, LLC, acting as the Company’s duly appointed transfer agent, registrar, conversion agent and dividend disbursing agent for the Preferred Stock, and its successors and assigns, or any other person appointed to serve as transfer agent, registrar, conversion agent and dividend disbursing agent by the Company.

“**Trigger Event**” shall have the meaning set forth in Section 6(e)(vii).

“**VWAP**” per share of Common Stock on any Trading Day shall mean the per share volume-weighted average price as displayed on Bloomberg page “**DTOC**” (or its equivalent successor if such page is not available) in respect of the period from Opening of Business to Close of Business on such Trading Day; or, if such price is not available, “**VWAP**” shall mean the market value per share of Common Stock on such Trading Day as determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained by the Company for this purpose.

3. DIVIDENDS.

(a) Holders shall be entitled to receive, with respect to each share of Preferred Stock, out of funds of the Company legally available for payment, cash dividends (“**Cash Dividends**”) on the Accrued Value in effect on the Dividend Record Date, computed on the basis of a 360-day year consisting of twelve 30-day months, at the Dividend Rate, payable on each Dividend Payment Date. Such Cash Dividends shall be payable in arrears on each Dividend Payment Date for the applicable Dividend Period, to the Holders as they appear on the Company’s stock register at the Transfer Agent at the Close of Business on the relevant Dividend Record Date. Dividends on the Preferred Stock shall accumulate and become Accrued Dividends on a day-to-day basis from the last day of the applicable Dividend Period until Cash Dividends are paid pursuant to this Section 3(a) in respect of such Accrued Dividends or pursuant to Sections 3(b), 3(c) and 3(d). If a Dividend Payment Date is not a Business Day, then any Cash Dividend in respect of such Dividend Payment Date shall be due and payable on the first Business Day following such Dividend Payment Date.

(b) Notwithstanding anything to the contrary in Section 3(a), the Company may, at its sole election, elect with respect to the Accrued Dividends for any Dividend Period (a “**Non-Cash Dividend Election**”) to increase the Accrued Value by the Dividend Rate (decreased proportionately to the extent of any cash paid in respect of such Accrued Dividend for such Dividend Period (e.g., if 25% of the Accrued Dividends for such Dividend Period is paid in cash, the rate would be reduced by 1.0% to 3.0%)) in lieu of paying such Accrued Dividends in cash (in part or in full), such increase to be effective at the Opening of Business on the day following the last day of such Dividend Period. If the Company fails to pay a Cash Dividend in respect of the Accrued Dividends for any Dividend Period, in whole or in part, on or prior to the respective Dividend Payment Date and does not make a Non-Cash Dividend Election in respect thereof, the Company shall be deemed to have made a Non-Cash Dividend Election for all purposes of this Certificate of Designations solely with respect to and to the extent of such portion of such Accrued Dividends for such Dividend Period as to which a Cash Dividend is not paid. To the extent any Holder shall become liable for or subject to any taxes, levies, imposts, duties, fees, assessments, withholding or other charges of whatever nature resulting from any adjustment to the Accrued Value pursuant to this Section 3(b), the Company shall promptly indemnify and hold harmless such Holder against any such amounts at the highest maximum combined marginal federal, state and local income tax rates to which any such Holder may be subject Any Non-Cash Dividend Election as to any Dividend Period shall be effective only if notice thereof is delivered to holders of Preferred Stock prior to the last day of such Dividend Period.

(c) Notwithstanding anything to the contrary herein, (x) if any shares of Preferred Stock are converted into Common Stock on a Conversion Date in accordance with this Certificate of Designations during the period between the last day of a Dividend Period and the Close of Business on the corresponding Dividend Payment Date and the Company has not made a Non-Cash Dividend Election in respect of such Dividend Period, then the amount of the Accrued Dividends in respect of such Dividend Period shall be added to the Accrued Value for purposes of such conversion; and (y) if any shares of Preferred Stock are converted into Common Stock in accordance with this Certificate of Designations on a Conversion Date during the period between the Close of Business on any Dividend Record Date and the Close of Business on the corresponding Dividend Payment Date, the Accrued Dividends with respect to such shares of Preferred Stock, at the Company's option, shall either (i) be paid in cash on or prior to the date of such conversion or (ii) not be paid in cash and be added to the Accrued Value for purposes of such conversion. For the avoidance of doubt, such Accrued Dividends shall include dividends accruing from, and including, the last day of the most recently preceding Dividend Period to, but not including, the applicable Conversion Date. The Holders at the Close of Business on a Dividend Record Date shall be entitled to receive any dividend paid as a Cash Dividend on those shares on the corresponding Dividend Payment Date.

(d) So long as any share of the Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on, and no redemption or repurchase shall be agreed to or consummated of, Parity Stock, Common Stock or any other shares of Junior Stock, unless all Accrued Dividends have been paid (including by way of an increase to the Accrued Value in accordance with Section 3(b)) and no such dividend or distribution or redemption or repurchase shall be paid or payable in cash for any period unless the Preferred Stock has been paid full Cash Dividends in respect of the same period; provided, however, that the foregoing limitation shall not apply to (i) a dividend payable on Common Stock or other Junior Stock in shares of Common Stock or other Junior Stock, (ii) the acquisition of shares of Common Stock or other Junior Stock in exchange for shares of Common Stock or other Junior Stock and the payment of cash in lieu of fractional shares of Common Stock or other Junior Stock; (iii) purchases of fractional interests in shares of Common Stock or other Junior Stock pursuant to the conversion or exchange provisions of shares of other Junior Stock or any securities exchangeable for or convertible into such shares of Common Stock or other Junior Stock; (iv) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business, including, without limitation, the forfeiture of unvested shares of restricted stock or share withholdings upon exercise, delivery or vesting of equity awards granted to officers, directors and employees and the payment of cash in lieu of fractional shares of Common Stock or other Junior Stock; (v) any dividends or distributions of rights in connection with a stockholders' rights plan or any redemption or repurchase of rights pursuant to any stockholders' rights plan; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock and the payment of cash in lieu of fractional shares of other Junior Stock. Notwithstanding the preceding, if full cash dividends have not been paid on the Preferred Stock and any Parity Stock, cash dividends may be declared and paid on the Preferred Stock and such Parity Stock only so long as the cash dividends are declared and paid pro rata so that amounts of cash dividends declared and paid per share on the Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that the Accrued Dividends per share on the shares of Preferred Stock and the accumulated and unpaid dividends on such other Parity Stock bear to each other.

(e) The Company shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required in this Certificate of Designation or the Company's certificate of incorporation) the Holders of shares of Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to the sum of (i) the amount of the aggregate Accrued Dividends then accrued on such share of Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Accrued Value; provided that if the Company declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Company, the dividend payable to the Holders pursuant to this Section 3 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend.

4. VOTING.

(a) Each Holder shall be entitled to the whole number of votes equal to the number of whole shares of Common Stock into which such Holder's shares of Preferred Stock would be convertible on the record date for the vote or consent of holders of Common Stock or if no record date is established, at the date such vote or consent is taken, and shall otherwise have voting rights and consent rights per share equal to the voting rights and consent rights of the Common Stock to the fullest extent permitted by law. Each Holder shall be entitled to receive the same prior notice of any meeting as is provided to the holders of the Common Stock, as well as prior notice of all actions to be taken by legally available means in lieu of a meeting, and shall vote as a class with the holders of Common Stock as if they were a single class of securities upon any matter submitted to a vote of stockholders, except those matters required by law or by the terms hereof to be submitted to a class vote of the Preferred Stock, in which case the Holders only shall vote as a separate class.

(b) So long as 3,325,805 shares of Preferred Stock (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof) are outstanding, in addition to any other vote or consent of stockholders required by the Delaware General Corporation Law or the Certificate of Incorporation, the affirmative vote or consent of the holders of at least a majority of the outstanding shares of Preferred Stock, voting together as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating (directly or indirectly, including by way of merger, consolidation, reclassification or otherwise) any of the following, and any of the following acts or transactions entered and/or effected without such consent or vote shall be null and void *ab initio* and of no force or effect:

(i) amend, alter, or repeal any provision of the Company's Certificate of Incorporation, this Certificate of Designation, the Company's bylaws or the LLC Agreement (or certificate of formation of the Operating LLC) in a manner that either (i) adversely affects the rights, privileges or preferences (economic or otherwise) of the Preferred Stock or (ii) materially modifies the rights, privileges, or preferences (economic or otherwise) of any class or series of equity security of the Company;

(ii) amend, alter, or change the rights, preferences or privileges of the Preferred Stock, including through any amendment, alteration or repeal of any provision of the LLC Agreement (or certificate of formation of the Operating LLC);

(iii) reclassify, alter or amend any (x) Junior Stock, if such reclassification, alteration or amendment would render such Junior Stock senior to or on a parity with the Preferred Stock as to liquidation preferences, redemption, distributions, dividend rights or rights upon the liquidation, winding-up or dissolution of the Company, or (y) any Parity Stock, if such reclassification, alteration or amendment would render such Parity Stock senior to the Preferred Stock as to liquidation preferences, redemption, distributions, dividend rights or rights upon the liquidation, winding-up or dissolution of the Company or the Operating LLC;

(iv) issue or obligate itself to issue shares of the Company senior to or pari passu with (or any equity security or debt instrument that is exercisable for or convertible into equity securities of the Company that are senior to or pari passu with) the Preferred Stock as to liquidation preferences, redemption, distributions, dividend rights or rights upon the liquidation, winding-up or dissolution of the Company or the Operating LLC;

(v) incur or refinance any indebtedness for borrowed money (including any refinancing of existing indebtedness) that either (i) results in the Company having a ratio of total leverage (calculated as its net debt) to its trailing twelve-month Adjusted EBITDA at any time following the incurrence of such indebtedness that is more than three times, (iii) provides for security over the Company's assets that is broader than outstanding indebtedness at the date of issuance of the Preferred Stock, or (iv) has materially more restrictive covenants of the Company than outstanding indebtedness at the Closing;

(vi) make any redemption, repurchase, dividend, or distribution (other than tax distributions) on any equity securities, or permit any Subsidiary (including the Operating LLC) to take any such action, other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, and (ii) repurchases of equity securities from former employees, officers, directors, consultants or other persons who performed services for the Company or any Subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price thereof;

(vii) with respect to the Company or the Operating LLC or any of their respective Subsidiaries (other than Subsidiaries with de minimis assets and operations), (x) initiate or commence an insolvency proceeding, including any state or federal insolvency proceeding, (y) effectuate an assignment for the benefit of creditors or (z) elect to dissolve, liquidate or otherwise wind-up affairs;

(viii) enter or enter into any transaction between the Company (or any Subsidiary of the Company, including the Operating LLC) on one hand, and any member of the Board of Directors, executive officer or member of senior management of the Company (or any Subsidiary), or securityholder of the Company (or any Subsidiary, including the Operating LLC) (other than ordinary course equity compensation grants), or their affiliates, on the other hand;

(ix) change the tax classifications of the Company or any of its direct or indirect Subsidiaries;

(x) increase or decrease the authorized number of directors constituting the Board of Directors; or

(xi) remove the Company's Chief Executive Officer from the Company's Board of Directors or approve the proposed replacement of the Company's Chief Executive Officer on the Company's Board of Directors.

(c) The Holders, exclusively and as a separate class, shall be entitled to elect one (1) director of the Company (the "**Preferred Director**"), as long as the Holders hold 5% or more of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors. The Preferred Director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the Holders, given either at a special meeting of the Holders duly called for that purpose or pursuant to a written consent of the Holders. If the Holders fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to this paragraph, then any directorship not so filled shall remain vacant until such time as the Holders elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by the Board of Directors or stockholders of the Company other than the Holders as provided herein. The Preferred Director shall at all times be designated as a Class I Director pursuant to Section 5.2 of the Certificate of Incorporation, unless otherwise determined by the Holders.

(d) Prior to the Close of Business on the applicable Conversion Date, the shares of Common Stock issuable upon conversion of the Preferred Stock shall not be deemed to be outstanding and Holders shall have no voting rights with respect to such shares of Common Stock solely by virtue of holding the Preferred Stock.

(e) In exercising the voting rights set forth in Section 4(b), each share of Preferred Stock shall be entitled to one vote.

(f) The rules and procedures for calling and conducting any meeting of holders of outstanding Common Stock in which the Holders may vote pursuant to Section 4(a) or any meeting of the Holders pursuant to Section 4(b) and Section 4(c) (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other procedural aspect or matter with regard to such a meeting or such consents shall be governed by any rules the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Certificate of Incorporation, the bylaws of the Company, applicable Law and the rules of any National Securities Exchange on which the Preferred Stock is listed or traded at the time.

5. LIQUIDATION RIGHTS.

(a) In the event of any liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event, whether voluntary or involuntary, each Holder shall be entitled to receive, in respect of such shares of Preferred Stock, and to be paid out of the assets of the Company available for distribution to its stockholders, in preference to the holders of, and before any payment or distribution is made on, any Junior Stock or any LLC Units an amount per share of Preferred Stock equal to the greater of (i) (1) the Original Issue Price thereon multiplied by the Applicable Percentage plus (2) any Accrued Dividends on such share of Preferred Stock (including all dividends that have previously accreted to Accrued Value pursuant to Section 3(b)), or (ii) such amount per share as would have been payable had all shares of Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, winding-up or dissolution of the Company or any Deemed Liquidation Event.

(b) Neither the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of its business) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 5.

(c) After the payment in full to the Holders of the amounts provided for in this Section 5, the Holders of shares of Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company in respect of their ownership of such Preferred Stock.

(d) In the event the assets of the Company available for distribution to the Holders upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such Holders are entitled pursuant to Section 5(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Preferred Stock, equally and ratably, in proportion to the full distributable amounts for which Holders of all Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

(e) The amount deemed paid or distributed to the holders of capital stock of the Company upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. If such amount deemed paid or distributed is in a form of property other than in cash, the value of such distribution shall be deemed to be the fair market value of such property. The determination of fair market value of such property shall be made in good faith by the Board of Directors, provided that to the extent such property consists of securities, the fair market value of such securities shall be determined as follows:

(i) For securities not subject to investment letters or other similar restrictions on free marketability covered by Section 5(e) (ii) below,

(A) if traded on a Trading Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) Trading Day period ending three (3) days prior to the closing of the Deemed Liquidation Event;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) Trading Day period ending three (3) days prior to the closing of such transaction; or

(C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

For the purposes of this Section 5(e)(i), “closing prices” or “closing bid or sales prices” shall be deemed to be: (A) for securities traded primarily on a Trading Market, the last reported trade price or sale price, as the case may be, at Close of Business, on that day and (B) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

(ii) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder’s status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors) from the market value as determined pursuant to Section 5(e)(i) above so as to reflect the approximate fair market value thereof.

6. CONVERSION.

(a) Each Holder shall have the right, at each Holder’s option, to convert such Holder’s shares of Preferred Stock, in whole or in part into that number of whole, fully paid and non-assessable shares of Common Stock for each share of Preferred Stock equal to the Conversion Ratio then in effect, with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 7. To convert shares of Preferred Stock into shares of Common Stock pursuant to this Section 6(a), such Holder shall give written notice (the “**Holder Conversion Notice**” and the date of such notice, the “**Holder Conversion Notice Date**”) to the Company stating that such Holder elects to so convert shares of Preferred Stock and shall state therein: (A) the number of shares of Preferred Stock to be converted by such Holder, (B) the name or names in which such Holder wishes the shares of Common Stock to be issued, (C) the Holder’s computation of the number of shares of Common Stock to be received by such Holder and (D) the Conversion Price on the Holder Conversion Notice Date. If a Holder validly delivers a Holder Conversion Notice in accordance with this Section 6(a), the Company shall issue the shares of Common Stock as soon as reasonably practicable, but in no event later than three (3) Business Days thereafter (the date of issuance of such shares, the “**Holder Conversion Date**”).

(b)

(i) On or after the three-year anniversary of the Issue Date, the Company shall have the right to cause all (but not less than all) of the outstanding shares of Preferred Stock to be converted into that number of whole, fully paid and non-assessable shares of Common Stock for each share of Preferred Stock at the Conversion Ratio then in effect, with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 7; *provided, however*, that the Company may only convert shares of Preferred Stock into shares of Common Stock pursuant to this Section 6(b)(i) if the 30-Day VWAP of the Common Stock immediately prior to the Company Conversion Date (as defined below) is greater than \$16.00 (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

(ii) To convert shares of Preferred Stock into shares of Common Stock pursuant to Section 6(b)(i), the Company shall give written notice (the “*Company Conversion Notice*” and the date of such notice, the “*Company Conversion Notice Date*”) to each Holder stating that the Company elects to force conversion of such shares of Preferred Stock pursuant to Section 6(b)(i), and shall state therein (A) the number of shares of Preferred Stock to be converted, (B) the effective date of such conversion (the “*Company Conversion Date*”) (C) the Conversion Price and the Conversion Ratio on the Company Conversion Date and (C) the Company’s computation of the number of shares of Common Stock to be received by the Holder. If the Company validly delivers a Company Conversion Notice in accordance with this Section 6(b)(ii), the conversion will be immediately effective and Company shall issue the shares of Common Stock effective immediately prior to the close of business on the Company Conversion Date.

(iii) Notwithstanding anything to the contrary herein, the Company may convert shares of Preferred Stock into shares of Common Stock pursuant to (and subject to the time limitations and other requirements of) this Section 6(b) at any time prior to the consummation of a Deemed Liquidation Event.

(c) Upon conversion, each Holder shall surrender to the Company the certificates representing any shares held in certificated form to be converted during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent maintained by it, accompanied by (i) (if so required by the Company or its duly appointed Transfer Agent) a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the Holder or its duly authorized legal representative and (ii) transfer tax stamps or funds therefor, if required pursuant to Section 6(i).

(d) Immediately prior to the Close of Business on the Holder Conversion Date or the Company Conversion Date, as applicable, with respect to a conversion, a Holder shall be deemed to be the holder of record of Common Stock issuable upon conversion of such Holder’s shares of Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Holder. Except to the extent that a Holder is not able to convert its shares of Preferred Stock into Common Stock as a result of Section 6(k), on the Holder Conversion Date or the Company Conversion Date, as applicable, dividends shall cease to accrue on the shares Preferred Stock so converted and all other rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of Holders thereof to receive the number of whole, fully paid and non-assessable shares of Common Stock into which such shares of Preferred Stock have been converted (with such adjustment or cash payment for fractional shares as the Company may elect pursuant to Section 7). As promptly as practical after the conversion of any shares of Preferred Stock into Common Stock, the Company shall deliver to the applicable Holder an Ownership Notice identifying the number of full shares of Common Stock to which such Holder is entitled, and a cash payment in respect of fractional shares in accordance with Section 7.

(e) The Conversion Price shall be subject to the following adjustments (except as provided in Section 6(f)):

(i) Adjustments to Conversion Price for Diluting Issues.

(A) Special Definitions. For purposes of this Section 6(e)(i), the following definitions shall apply:

(1) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Section 6(e)(i)(D) below, deemed to be issued) by the Company after the Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, **“Exempted Securities”**):

i. as to the Preferred Stock, shares of Common Stock issued as a dividend or distribution on such series of Preferred Stock;

ii. shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Company or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors;

iii. shares of Common Stock, Options or Convertible Securities issued as consideration in any bona fide business acquisition by the Company or any Subsidiary thereof, whether by merger, consolidation, purchase of assets or otherwise approved by the Board of Directors, including the approval of the Preferred Director;

iv. shares of Common Stock, Options or Convertible Securities issued to Persons with which the Company or any Subsidiary thereof has entered into a bona fide new strategic partnership approved by the Board of Directors, including the approval of the Preferred Director, provided that such issuances are not in connection with any equity financing;

v. shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

vi. shares of Common Stock, Options or Convertible Securities issued to a lender in connection with a debt financing or the amendment of any debt financing arrangements approved by the Board of Directors, including the approval of the Preferred Director; or

vii. shares of Common Stock, Options or Convertible Securities issued in a conversion of the Company or upon any split, combination, dividend or other similar event in respect of the Company equity securities approved by the Board of Directors, including the approval of the Preferred Director.

(2) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(3) **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Company receives written notice from the Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Company, AON, or any Subsidiary at any time or from time to time after the Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(i)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Company upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(i)(D) (either because the consideration per share (determined pursuant to Section 6(e)(i)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Issue Date), are revised after the Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Company upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in this Section 6(e)(i)(C)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(i)(D), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Company upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 6(e)(i)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Section 6(e)(i)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Company upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 6(e)(i)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Company shall at any time after the Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 6(e)(i)(C)), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) \div (A + C).$$

| | | |
|-----|---|---|
| CP1 | = | the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock; |
| CP2 | = | the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock; |
| A | = | the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue); |
| B | = | the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Company in respect of such issue by CP1); and |
| C | = | the number of such Additional Shares of Common Stock issued in such transaction. |

(E) Determination of Consideration. For purposes of this Section 6(e)(i), the consideration received by the Company for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property. Such consideration shall:

i. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company, excluding amounts paid or payable for accrued interest;

ii. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Company; and

iii. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Company.

(2) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Section 6(e)(i)(C), relating to Options and Convertible Securities, shall be determined by dividing:

i. The total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

ii. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) Multiple Closing Dates. In the event the Company shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(i)(D), and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(ii) Special Adjustment for Trading Price. If at any time on or after the 30th day after the five-year anniversary of the Issue Date, any of the Preferred Stock remain outstanding and the 30-Day VWAP of the Common Stock is less than \$10.00 (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), then the Conversion Price shall be adjusted to the greater of (x) the 30-Day VWAP on such date of determination and (y) \$5.00 (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof) (such adjusted price, the “**Special Adjustment Price**”); provided, that, if, at any such time the Conversion price then in effect is less than the Special Adjustment Price, then no adjustment shall be made pursuant to this Section 6(e)(ii).

(iii) Adjustment for Certain Dividends and Distributions. If the Company pays a dividend (or other distribution) in shares of Common Stock to holders of the Common Stock, in their capacity as holders of Common Stock and such dividend is not also declared on the Preferred Stock, then the Conversion Price in effect immediately following the record date for such dividend (or distribution) shall be divided by the following fraction:

$$\frac{OS_1}{OS_0}$$

where

OS₀ = the number of shares of Common Stock outstanding immediately prior to the record date for such dividend or distribution; and
OS₁ = the sum of (A) the number of shares of Common Stock outstanding immediately prior to the record date for such dividend or distribution and (B) the total number of shares of Common Stock constituting such dividend.

(iv) Adjustment for Certain Subscription Rights. If the Company issues to holders of shares of the Common Stock, in their capacity as holders of Common Stock, rights, options or warrants entitling them, for a period of not more than sixty days from the date of issuance of such rights, options or warrants, to subscribe for or purchase shares of Common Stock at less than the Market Value determined on the Ex-Date for such issuance, then the Conversion Price in effect immediately following the Close of Business on the record date for such issuance shall be divided by the following fraction:

$$\frac{OS_0 + X}{OS_0 + Y}$$

where

OS₀ = the number of shares of Common Stock outstanding at the Close of Business on the record date for such issuance;
X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the Market Value determined as of the Ex-Date for such issuance.

To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights or warrants upon the exercise of such rights or warrants, the Conversion Price on any then-outstanding share of Preferred Stock not previously converted shall be readjusted to such Conversion Price that would have then been in effect had the adjustment made upon the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Price shall not be adjusted until such triggering events occur. In determining the aggregate offering price payable for such shares of Common Stock, the conversion agent shall take into account any consideration received for such rights, options or warrants and the value of such consideration (if other than cash, to be determined by the Board of Directors).

(v) Adjustment for Stock Splits and Combinations. If the Company subdivides, combines or reclassifies the shares of Common Stock into solely a greater or lesser number of shares of Common Stock, then the Conversion Price in effect immediately following the Opening of Business on the effective date of such share subdivision, combination or reclassification shall be divided by the following fraction:

$$\frac{OS_1}{OS_0}$$

where

OS₀ = the number of shares of Common Stock outstanding immediately prior to the effective date of such share subdivision, combination or reclassification; and
OS₁ = the number of shares of Common Stock outstanding immediately after the Opening of Business on the effective date of such share subdivision, combination or reclassification.

(vi) Adjustment for Merger or Reorganization, etc.

(A) If the Company distributes to all holders of shares of Common Stock evidences of indebtedness, shares of capital stock (other than Common Stock) or other assets (including securities, but excluding any dividend or distribution referred to in clause (i); any rights or warrants referred to in clause (ii) above; any consideration payable in connection with a tender offer made by the Company or any of its Affiliates referred to in clause (v) below; and any dividend of shares of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit in the case of a spin-off to which the following clause (iv)(B) applies), then the Conversion Price in effect immediately following the Close of Business on the record date for such distribution shall be divided by the following fraction:

$$\frac{SP_0}{SP_0 - FMV}$$

where

SP₀ = the Closing Sale Price per share of Common Stock on the Trading Day immediately preceding the Ex-Date for such distribution; and
FMV = the fair market value of the portion of the distribution applicable to one share of Common Stock at the Close of Business on the Trading Day immediately preceding the Ex-Date as determined by the Board of Directors.

Notwithstanding the foregoing, if “*FMV*” (as defined above) is equal to or greater than “*SP₀*” (as defined above), in lieu of the foregoing adjustment to the Conversion Price, each holder of Preferred Stock shall receive, for each share of Preferred Stock, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of such distributed assets that such holder would have received as if such holder owned a number of shares of Common Stock equal to the Conversion Ratio in effect on the record date for the distribution.

(B) In a spin-off, where the Company makes a distribution to all holders of shares of Common Stock consisting of capital stock of any class or series, or similar equity interests, of or relating to, a Subsidiary or other business unit where such capital stock or similar equity interests are, or will be when issued, listed or admitted for trading on a National Securities Exchange, the Conversion Price shall be adjusted at the Close of Business on the tenth Trading Day after the Ex-Date of the distribution by dividing such Conversion Price in effect immediately prior to the Opening of Business on such tenth Trading Day by the following fraction:

$$\frac{MP_0 + MP_S}{MP_0}$$

where

- MP₀ = the average of the Closing Sale Price of the Common Stock over each of the first 10 Trading Days commencing on and including the Ex-Date of such distribution; and
- MP_S = the average of the closing sale price of the capital stock or equity interests representing the portion of such distribution applicable to one share of Common Stock over each of the first 10 Trading Days commencing on and including the Ex-Date of such distribution, as reported in the principal securities exchange or quotation system or market on which such shares are traded, or if not traded on a national or regional securities exchange or over-the-counter market, the fair market value of the capital stock or equity interests representing the portion of such distribution applicable to one share of Common Stock on such Ex-Date as determined by the Board of Directors. Such closing sale prices for the Trading Days in such 10 Trading Day period shall be adjusted in respect of transactions in respect of such capital stock or equity interests in like manner to the adjustment to “**Closing Sale Price**” specified in the second sentence of the definition of such term.

For purposes of determining the Conversion Price in respect of any Conversion Date that occurs during the 10 Trading Days following, and including, the Ex-Date of any such spin-off, references within the previous sentence to 10 Trading Days or the 10th Trading Day shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Date of such distribution and such Conversion Date. In the event that such distribution described in this clause (iv) is not so made, the Conversion Price of any then outstanding shares of Preferred Stock not previously converted shall be readjusted, effective as of the date the Board of Directors publicly announces its decision not to pay such dividend or distribution, to the Conversion Price that would then be in effect if such dividend distribution had not been declared.

(vii) Notwithstanding anything herein to the contrary, no adjustment under this Section 6(e) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1.0% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the earlier of (i) the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1.0% of such Conversion Price and (ii) the Opening of Business on each Conversion Date.

(viii) Notwithstanding any other provisions of this Section 6(e), rights or warrants distributed by the Company to holders of Common Stock, in their capacity as holders of Common Stock, entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (A) are deemed to be transferred with such shares of Common Stock; (B) are not exercisable; and (C) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 6(e) (and no adjustment to the Conversion Price under this Section 6(e) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under Section 6(e)(ii) or 6(e)(iv). In addition, in the event of any distribution (or deemed distribution) of rights or warrants for which an adjustment to the Conversion Price under this Section 6(e) was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price on any then-outstanding share of Preferred Stock not previously converted shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise thereof, the Conversion Price on any then-outstanding share of Preferred Stock not previously converted shall be readjusted as if such expired or terminated rights and warrants had not been issued. To the extent that the Company has a rights plan or agreement in effect upon conversion of the Preferred Stock, which rights plan provides for rights or warrants of the type described in this clause, then upon conversion of Preferred Stock the Holder will receive, in addition to the Common Stock to which he is entitled, a corresponding number of rights in accordance with the rights plan, unless a Trigger Event has occurred and the adjustments to the Conversion Price with respect thereto have been made in accordance with the foregoing first sentence of this Section 6(e)(viii). In lieu of any such adjustment pursuant to the first sentence of this Section 6(e)(viii) in respect of a Trigger Event, the Company may amend such applicable stockholder rights plan or agreement to provide that there shall be the distributed, and cause to be distributed, immediately prior to the occurrence of such Trigger Event, to all Holders of Preferred Stock the rights that would have attached to such number of shares of Common Stock as are issuable upon conversion of such Preferred Stock immediately prior to the occurrence of such Trigger Event, without having to convert their shares of Preferred Stock.

(f) Notwithstanding anything to the contrary in Section 6(e), no adjustment to the Conversion Price shall be made with respect to any distribution if the Holders are entitled to participate in such distribution as if they held a number of shares of Common Stock issuable upon conversion of the Preferred Stock immediately prior to the record date for such distribution, without having to convert their shares of Preferred Stock.

(g) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect on any then-outstanding share of Preferred Stock not previously converted shall be required by reason of the taking of such record.

(h) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each Holder a certificate signed by an Officer, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.

(i) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock and the issuance or delivery of any Ownership Notice, whether at the request of a Holder or upon the conversion of shares of Preferred Stock, shall each be made without charge to the Holder or recipient of shares of Preferred Stock for such certificates or Ownership Notice or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby or such Ownership Notice or the securities identified therein, and such certificates or Ownership Notice shall be issued or delivered in the respective names of, or in such names as may be directed by, the applicable Holder; *provided, however*, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the Holder of the shares of the relevant Preferred Stock and the Company shall not be required to issue or deliver any such certificate or Ownership Notice unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

(j) Any shares of Common Stock delivered pursuant to this Section 6 shall be validly issued, fully paid and nonassessable (except as such nonassessability may be affected by matters of any Law), free and clear of any liens, claims, rights or encumbrances other than those arising under the Delaware General Corporation Law or this Certificate of Designations or created by the holders thereof.

(k) The Company shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock such maximum number of its authorized but unissued and otherwise unreserved shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Preferred Stock pursuant any applicable provision of this Certificate of Designations, and shall take all action required to be taken by it (including promptly calling and holding one or more special meetings of the Board of Directors and the stockholders of the Company until such increase is approved in accordance with applicable Law and amending the Certificate of Incorporation) to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued and otherwise unreserved shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Preferred Stock. Notwithstanding anything herein to the contrary, unless otherwise agreed by the affirmative vote of the Holders of at least a majority of the shares of Preferred Stock at the time outstanding and entitled to vote thereon, all shares of Preferred Stock which would otherwise convert into shares of Common Stock shall remain outstanding and shall continue to accumulate and compound additional dividends pursuant to Section 3 until such time as there are sufficient unissued shares of Common Stock to permit the conversion of all outstanding shares of Preferred Stock.

(l) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger or combination involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety, or

(iv) any statutory share exchange,

in each case, (x) that is not a Deemed Liquidation Event and (y) as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such transaction or event, a "**Reorganization Event**"), then, at and after the effective time of such Reorganization Event, the right to convert each share of Preferred Stock shall be changed into a right to convert such share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Ratio immediately prior to such Reorganization Event would have owned or been entitled to receive upon such Reorganization Event (such stock, securities or other property or assets, the "**Reference Property**"); provided, however, if the holders of shares of Common Stock have the opportunity to elect the form of consideration to be received in such Reorganization Event, the consideration that the Holders will receive will be the form and proportion of the aggregate consideration elected by the holders of shares of Common Stock who participate in the determination (based on the weighted average of elections) and will be subject to any limitations to which all holders of shares of Common Stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Reorganization Event. The Company shall not become a party to any Reorganization Event unless its terms are consistent with this Section 6(l). None of the foregoing provisions shall affect the right of a Holder of Preferred Stock to convert its Preferred Stock into shares of Common Stock as set forth in Section 6 prior to the effective time of such Reorganization Event. Notwithstanding Section 6(e), no adjustment to the Conversion Ratio shall be made for any Reorganization Event to the extent stock, securities or other property or assets become the Reference Property receivable upon conversion of Preferred Stock.

The Company shall provide, by amendment hereto effective upon any such Reorganization Event, for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Section 6. The provisions of this Section 6 shall apply to successive Reorganization Events.

In this Certificate of Designations, if the Common Stock has been replaced by Reference Property as a result of any such Reorganization Event, references to the Common Stock are intended to refer to such Reference Property.

(m) In addition to any other rights available to the Holders, if the Company fails for any reason to deliver to a Holder the shares of Common Stock following any conversion pursuant to this Section 6 (the “**Conversion Shares**”) by the applicable deadline pursuant to this Section 6 (the “**Share Delivery Date**”), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder’s brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a “**Buy-In**”), then the Company shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder’s total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under this Section 6. For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000, under clause (A) of the immediately preceding sentence, the Company shall be required to pay such Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

7. No Fractional Shares.

No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be issued upon conversion, whether voluntary or mandatory, or in respect of dividend payments made in Common Stock on the Preferred Stock. Instead, the number of shares of Common Stock to be issued to any particular Holder upon conversion shall be rounded up to the next whole share.

8. Uncertificated Shares.

(a) Uncertificated Shares.

(i) Form. Notwithstanding anything to the contrary herein, unless requested in writing by a Holder to the Company, the shares of Preferred Stock and any shares of Common Stock issued upon conversion thereof shall be in uncertificated, book entry form as permitted by the bylaws of the Company and the Delaware General Corporation Law. Within a reasonable time after the issuance or transfer of uncertificated shares, the Company shall, or shall cause the Transfer Agent to, send to the registered owner thereof an Ownership Notice.

(ii) Transfer. Transfers of Preferred Stock or Common Stock issued upon conversion thereof held in uncertificated, book-entry form shall be made only upon the transfer books of the Company kept at an office of the Transfer Agent upon receipt of proper transfer instructions from the registered owner of such uncertificated shares, or from a duly authorized attorney or from an individual presenting proper evidence of succession, assignment or authority to transfer the stock. The Company may refuse any requested transfer until furnished evidence satisfactory to it that such transfer is proper.

(iii) Legends. Each Ownership Notice issued with respect to a share of Preferred Stock shall bear a legend in substantially the following form:

“THE SECURITIES IDENTIFIED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW OWNERSHIP NOTICE PROVIDED WITH RESPECT TO THE SECURITIES IDENTIFIED HEREIN UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE CERTIFICATE OF INCORPORATION OF AMERICAN ONCOLOGY NETWORK, INC. (THE “**COMPANY**”), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE “**CHARTER**”). THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND

THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS NOTICE BY REFERENCE.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.”

(b) Certain Obligations with Respect to Transfers and Exchanges of Preferred Stock.

(i) All shares of Preferred Stock issued upon any registration of transfer or exchange of such shares of Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designations as the shares of Preferred Stock surrendered upon such registration of transfer or exchange.

(ii) Prior to due presentment for registration of transfer of any shares of Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Preferred Stock are registered as the absolute owner of such Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(iii) No service charge shall be made to a Holder for any registration of transfer or exchange of any Preferred Stock or Common Stock issued upon the conversion thereof on the transfer books of the Company or the Transfer Agent or upon surrender of any Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose.

(c) No Obligation of the Transfer Agent. The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designations or under applicable Law with respect to any transfer of any interest in any Preferred Stock other than to require delivery of such documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designations, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

9. TAX TREATMENT. For U.S. federal and applicable state and local income tax purposes, the Company and holders of the Preferred Stock shall not report on its tax returns or otherwise (including information returns) or otherwise treat (1) Accrued Value that has accrued on the Preferred Stock but has not been paid in cash as constructive distributions required to be included into income of any holder of Preferred Stock (or its direct or indirect owners, as applicable) pursuant to Section 305(c) of the Internal Revenue Code of 1986, as amended (the “Code”), or otherwise treat such Accrued Value as distributions required to be included in income on a current basis or (2) the Preferred Stock as having any redemption premium within the meaning of Treasury Regulations Section 1.305-5(b) (and any corresponding provision of state or local law); except in each case as required by any of the following: (w) a change in relevant law occurring after the initial issue date, (x) after the initial issue date, the promulgation of relevant final U.S. Treasury Regulations addressing instruments similar to the Preferred Stock (from and after the effective date of such final regulations), (y) any amendment to the terms of this Certification of Designations that is made with the necessary consent of the holders of the Preferred Stock or (z) a “determination” within the meaning of Section 1313(a) of the Code.

10. OTHER PROVISIONS.

(a) With respect to any notice to a Holder required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any vote upon any such action (assuming due and proper notice to such other Holders). Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

(b) Shares of Preferred Stock that have been issued and reacquired by the Company in any manner, including shares of Preferred Stock purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the Laws of Delaware) upon such reacquisition be automatically cancelled by the Company and shall not be reissued.

(c) The shares of Preferred Stock shall be issuable only in whole shares.

(d) All notice periods referred to herein shall commence: (i) when made, if made by hand delivery, and upon confirmation of receipt, if made by facsimile; (ii) one Business Day after being deposited with a nationally recognized next-day courier, postage prepaid; or (iii) three Business Days after being sent by certified or registered mail, postage prepaid. Notice to any Holder shall be given to the registered address set forth in the Company’s records for such Holder.

(e) Any payments required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day without interest or additional payment for such delay. All payments required hereunder shall be made by wire transfer of immediately available funds in United States Dollars to the Holders in accordance with the payment instructions as such Holders may deliver by written notice to the Company from time to time.

(f) Notwithstanding anything to the contrary herein, whenever the Board of Directors is permitted or required to determine fair market value, such determination shall be made in good faith.

(g) Without limiting Section 4(b), the Holders shall have no preemptive or preferential rights to purchase or subscribe to any stock, obligations, warrants or other securities of the Company of any class.

(h) The Company shall distribute to the Holders copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of the Common Stock, at such times and by such method as documents are distributed to such holders of such Common Stock; provided, however, that the Company’s obligations under this Section 10(h) shall be deemed to have been satisfied if such notices, materials, annual and quarterly reports, proxy statements, information statements or other documents are filed with the Securities and Exchange Commission via its Electronic Data Gathering, Analysis and Retrieval System and such information is publicly available on such system.

[Signature page follows.]

IN WITNESS WHEREOF, the Company has caused this certificate to be signed this 20th day of September, 2023.

AMERICAN ONCOLOGY NETWORK, INC.

By: /s/ Todd Schonherz
Todd Schonherz
Chief Executive Officer

[SIGNATURE PAGE TO CERTIFICATE OF DESIGNATIONS]

OWNERSHIP NOTICE

THE SECURITIES IDENTIFIED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR ANY STATE SECURITIES LAWS. NEITHER THESE SECURITIES NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE FOREGOING LEGEND WILL BE REMOVED AND A NEW OWNERSHIP NOTICE PROVIDED WITH RESPECT TO THE SECURITIES IDENTIFIED HEREIN UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE CERTIFICATE OF INCORPORATION OF AMERICAN ONCOLOGY NETWORK, INC. (THE "**COMPANY**"), INCLUDING THE CERTIFICATES OF DESIGNATIONS INCLUDED THEREIN (AS FURTHER AMENDED AND RESTATED FROM TIME TO TIME, THE "**CHARTER**"). THE COMPANY IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OF STOCK OR MORE THAN ONE SERIES OF ANY CLASS AND THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. THE SHARES EVIDENCED BY THIS NOTICE ARE SUBJECT TO THE OBLIGATIONS AND RESTRICTIONS STATED IN, AND ARE TRANSFERABLE ONLY IN ACCORDANCE WITH, THE PROVISIONS OF THE CHARTER. THE TERMS OF THE CHARTER ARE HEREBY INCORPORATED INTO THIS NOTICE BY REFERENCE.

IF THE SECURITIES IDENTIFIED HEREIN ARE SERIES A PREFERRED STOCK OF THE COMPANY, THEN BY ACCEPTANCE HEREOF, THE HOLDER SHALL BE DEEMED TO HAVE AGREED WITH THE COMPANY THAT, FOR SO LONG AS THE HOLDER HOLDS THIS SECURITY, THE HOLDER SHALL NOT, AND SHALL CAUSE ITS AFFILIATES NOT TO, DIRECTLY OR INDIRECTLY ENGAGE IN ANY SHORT SALE OF THE COMMON STOCK OF THE COMPANY.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

This letter confirms and acknowledges that you are the registered owner of the number and the class or series of shares of capital stock of the Company listed on **Schedule A** to this letter.

In addition, please be advised that the Company will furnish without charge to each stockholder of the Company who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock, or series thereof, of the Company and the qualifications, limitations or restrictions of such preferences and/or rights, which are fixed by the Charter. Any such request should be directed to the Secretary of the Company.

The shares of capital stock of the Company have been not been registered under the Securities Act and, accordingly, may not be offered, sold, pledged or otherwise transferred within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an effective registration statement under the Securities Act or an exemption from the registration requirements of the Securities Act.

Dated: _____

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC, as Transfer Agent,

By: _____
Authorized Signatory

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**” as amended, restated, supplemented, or otherwise modified from time to time) dated as of September 20, 2023, is made and entered into by and among AMERICAN ONCOLOGY NETWORK, INC. (formerly known as Digital Transformation Opportunities Corp.), a Delaware corporation (the “**Company**”), DIGITAL TRANSFORMATION SPONSOR LLC, a Delaware limited liability company (the “**Sponsor**”), and the undersigned parties listed on the signature page hereto under “**Holders**” (each such party, together with any person or entity who hereafter becomes a party to this Agreement pursuant, a “**Holder**” and collectively the “**Holders**”).

WHEREAS, the Company and the Sponsor have entered into that certain Securities Subscription Agreement, dated as of January 8, 2021, pursuant to which the Sponsor purchased an aggregate of 7,187,500 shares of the Class B Common Stock, par value \$0.0001 per share (“**Class B Common Stock**”);

WHEREAS, the Company subsequently effected a stock dividend resulting in the Sponsor holding an aggregate of 8,625,000 shares of the Class B Common Stock (the “**Founder Shares**”);

WHEREAS, the Founder Shares are convertible into shares of the Class A Common Stock, par value \$0.0001 per share (“**Class A Common Stock**”), at the time of the Business Combination on a one-for-one basis, subject to adjustment, on the terms and conditions provided in the Company’s amended and restated certificate of incorporation, as may be amended from time to time;

WHEREAS, on March 9, 2021, the Company and the Sponsor entered into that certain Private Placement Warrant Purchase Agreement, pursuant to which the Sponsor agreed to purchase 5,666,667 warrants (or up to 6,266,667 warrants if the over-allotment option in connection with the Company’s initial public offering is exercised in full) (together with all other warrants issued by the Company to the Sponsor on substantially the same terms, the “**Private Placement Warrants**”), in a private placement transaction occurring simultaneously with the closing of the Company’s initial public offering, each Private Placement Warrant entitling the holder to purchase one share of Common Stock at an exercise price of \$11.50 per share;

WHEREAS, the Company, the Sponsor and the other parties thereto (collectively, the “**Existing Holders**”) entered that certain registration and stockholder rights agreement, dated as of March 9, 2021 (the “**Original RRA**”) pursuant to which certain Holders are entitled to registration rights;

WHEREAS, the Company and American Oncology Network, LLC, a Delaware limited liability company (“**AON**”), entered into that certain Business Combination Agreement dated as of October 5, 2022 (as it may be amended from time to time in accordance with the terms thereof the “**BCA**”) in connection with the business combination of the Company and AON (the “**Business Combination**”) and other transactions contemplated therein;

WHEREAS, concurrently with the execution of the BCA, the Sponsor, its Affiliates and certain stockholders of the Company have entered into the Sponsor Agreement (the “**Sponsor Agreement**”);

WHEREAS, upon the consummation of the Business Combination, AON, the Company, as the managing member of AON, and each of the other parties thereto entered into that certain fourth amended and restated operating agreement of AON dated as of the date hereof (as it may be further amended, supplemented or restated from time to time in accordance with the terms of such agreement, the “**LLC Agreement**”);

WHEREAS, pursuant to Section 6.8 of the Original RRA, the provisions, covenants and conditions set forth in the Original RRA may be amended or modified upon the written consent of the Company and the holders of a majority-in-interest of the Registrable Securities (as such term is defined in the Original RRA); and

WHEREAS, in connection with the execution of this Agreement, the Company and the Existing Holders desire to amend and restate the Original RRA in its entirety as set forth herein and enter into this Agreement, pursuant to which the Company shall provide the Holders with certain rights relating to the registration of the Registrable Securities on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS. The following capitalized terms used herein have the following meanings:

“**Additional Holder**” shall have the meaning given in Section 7.13 hereof.

“**Additional Holder Common Stock**” shall have the meaning given in Section 7.13 hereof.

“**Additional Registrable Security**” shall mean (i) any shares of Class A Common Stock issued by the Company to a Holder in connection with the redemption by a Holder of Common Units owned by any Holder and (ii) any other equity security of the Company or any of its subsidiaries issued or issuable with respect to any securities referenced in clause (i) above by way of a stock dividend or stock split or in connection with a recapitalization, merger, consolidation, spin-off, reorganization or similar transaction.

“**Adverse Disclosure**” shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the chief executive officer or any principal financial officer of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed, and (iii) the Company has a bona fide business purpose for not making such information public.

“**Affiliate**” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise.

“**Agreement**” shall have the meaning given in the Preamble hereto

“**Amended and Restated Company Certificate of Incorporation**” shall mean the Amended and Restated Acquiror Certificate of Incorporation, as defined in the BCA.

“**AEA**” means AEA Growth Equity Fund LP, AEA Growth Equity Fund (Parallel) LP and any of its Affiliates.

“**AON**” shall have the meaning given in the Preamble hereto.

“**AON Lock-Up Period**” shall mean, with respect to the Exchange Shares, the period beginning on the Closing Date and ending on the day that is six (6) months after the Closing Date.

“**BCA**” shall have the meaning given in the Recitals hereto. “**Class A Common Stock**” means the Class A common stock, par value \$0.0001 per share, of the Company.

“**Class A Common Stock**” shall have the meaning given in the Recitals hereto.

“**Class B Common Stock**” shall have the meaning given in the Recitals hereto.

“**Closing**” shall have the meaning given in the BCA.

“**Closing Date**” shall have the meaning given in the BCA.

“**Commission**” means the Securities and Exchange Commission, or any other federal agency then administering the Securities Act or the Exchange Act.

“**Common Stock**” means, collectively, Class A Common Stock and Class B Common Stock.

“**Common Units**” shall have the meaning given in the LLC Agreement.

“**Company**” is defined in the preamble to this Agreement and includes the Company’s successors by recapitalization, merger, consolidation, spin-off, reorganization or similar transaction.

“**Demanding Holder**” is defined in Section 2.2.1.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“**FINRA**” shall mean the Financial Industry Regulatory Authority, Inc. or any successor thereto.

“**Form S-1 Shelf**” shall have the meaning given in Section 2.1 hereof.

“**Founder Shares**” shall have the meaning given in the Recitals hereto.

“**Holder Indemnified Party**” is defined in Section 4.1.

“**Holders**” shall have the meaning given in the Preamble hereto, for so long as such person or entity holds any Registrable Securities.

“**Indemnified Party**” is defined in Section 4.3.

“**Indemnifying Party**” is defined in Section 4.3.

“**Initial Registrable Security**” shall mean (i) any shares of the Class A Common Stock issued in connection with any exchange or redemption of Common Units and Class B Common Stock issued pursuant to the terms of the LLC Agreement or Amended and Restated Company Certificate of Incorporation, as applicable (collectively, the “**Exchange Shares**”); and (ii) (a) the shares of Class A Common Stock issued or issuable upon the conversion of any Founder Shares, (b) the Private Placement Warrants (including any shares of the Common Stock issued or issuable upon the exercise of any such Private Placement Warrants), (c) any outstanding shares of Class A Common Stock or any other equity security (including the shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company held by a Holder as of the date of the Original RRA, (d) any other equity security of the Company issued or issuable with respect to any such shares of Class A Common Stock by way of a stock dividend or stock split or other distribution or in connection with a combination of shares, recapitalization or reclassification or other similar transaction, merger, consolidation or reorganization, and (e) the Class A Common Stock issuable or issued upon conversion of any shares of Preferred Stock; *provided, however*, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities when: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (B) such securities shall have been otherwise transferred, new certificates for such securities not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; or (D) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

“**Issuer Shelf Registration Statement**” shall have the meaning given in Section 2.1.2 hereof.

“**Joinder**” shall have the meaning given in Section 7.10 hereof.

“**LLC Agreement**” shall have the meaning given in the Recitals hereto.

“**Lock-Up**” shall have the meaning given in Section 6.1 hereof.

“**Lock-Up Period**” means, collectively, the AON Lock-Up Period and the Sponsor Lock-Up Period.

“**Lock-Up Shares**” shall mean, (i) with respect to the any Holder that is a party to the Sponsor Agreement, any shares of Class A Common Stock held by such Holder during the Sponsor Lock-Up Period; and (ii) any Exchange Share during the AON Lock-Up Period.

“**Maximum Number of Shares**” is defined in Section 2.1.4.

“**Minimum Takedown Threshold**” shall have the meaning given in Section 2.1.5 hereof.

“**Notices**” is defined in Section 7.3.

“**Original RRA**” shall have the meaning given in the Recitals hereto.

“**Permitted Transferee**” is defined in Section 6.2.

“**Person**” means any individual, firm, corporation, partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, governmental agency or instrumentality or other entity of any kind

“**Piggy-Back Registration**” is defined in Section 2.3.1.

“**PIPE Investors**” shall have the meaning given in the BCA.

“**Preferred Stock**” means the Series A Preferred Stock of the Company, par value \$0.0001 per share, to be created on the Closing.

“**Preferred Units**” shall have the meaning given to the term “Series A Preferred Unit” in the LLC Agreement.

“**Private Placement Warrants**” shall have the meaning given in the Recitals hereto.

“**Prospectus**” shall mean the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

“**Registrable Securities**” means collectively the Initial Registrable Securities and the Additional Registrable Securities. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (B) such securities shall have been otherwise transferred, new certificates for such securities not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; (D) other than with respect to Registrable Securities held by AEA, such securities may be sold without registration pursuant to Rule 144 promulgated under the Securities Act (or any successor rule promulgated thereafter by the Commission) (but with no volume or other restrictions or limitations); or (E) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

“Registration” shall mean a registration, including any related Shelf Takedown, effected by preparing and filing a Registration Statement, Prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“Registration Expenses” shall mean the documented, out-of-pocket expenses of a Registration, including, without limitation, the following:

- (a) all registration and filing fees (including fees with respect to filings required to be made with FINRA) and any national securities exchange on which the Class A Common Stock is then listed;
- (b) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of outside counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);
- (c) fees and disbursements of underwriters customarily paid by issuers of securities in a secondary offering, but excluding underwriting discounts and commissions and transfer taxes, if any, with respect to Registrable Securities sold by Holders;
- (d) printing, messenger, telephone and delivery expenses;
- (e) reasonable fees and disbursements of counsel for the Company;
- (f) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration; and
- (g) reasonable fees and expenses of one legal counsel selected by the majority-in-interest of the Takedown Demanding Holdings or Demanding Holders, as applicable (which majority-in-interest must include AEA, if AEA is a Takedown Demanding Holder or Demanding Holder), in an Underwritten Offering.

“Registration Statement” means any registration statement that covers Registrable Securities pursuant to the provisions of this Agreement, including any Shelf, and, in each case, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement and all exhibits to, and all material incorporated by reference in, such registration statement.

“Requesting Holders” shall have the meaning given in Section 2.2.4 hereof.

“Rule 144” shall mean Rule 144 promulgated under the Securities Act, as amended from time to time, or any similar successor rule thereto that may be promulgated by the Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“Shelf” shall mean the Form S-1 Shelf, any Issuer Shelf Registration Statement or any Subsequent Shelf Registration, as the case may be.

“**Shelf Registration**” shall mean a registration of securities pursuant to a registration statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act, as amended from time to time, or any similar successor rule thereto that may be promulgated by the Commission.

“**Shelf Takedown**” shall mean an Underwritten Shelf Takedown or any proposed transfer or sale using a Registration Statement, including a Piggy-Back Registration.

“**Sponsor**” shall have the meaning given in the Preamble hereto.

“**Sponsor Lock-Up Period**” shall mean, with respect to each Holder that is a party to the Sponsor Agreement, the period beginning on the Closing Date and ending on the day that is twelve (12) months after the Closing Date.

“**Subsequent Shelf Registration**” shall have the meaning given in Section 2.1.3 hereof.

“**Takedown Demanding Holder**” is defined in Section 2.1.5.

“**Total Limit**” shall have the meaning given in Section 2.1.5 hereof.

“**Transfer**” shall mean the (i) sale or assignment of, offer to sell, contract or agreement to sell, hypothecation, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (ii) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (iii) public announcement of any intention to effect any transaction specified in clause (i) or (ii).

“**Underwriter**” means a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer’s market-making activities.

“**Underwritten Lock-Up Period**” shall have the meaning given in Section 2.4 hereof.

“**Underwritten Offering**” shall mean a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

“**Underwritten Shelf Takedown**” shall have the meaning given in Section 2.1.5 hereof.

“**Withdrawal Notice**” shall have the meaning given in Section 2.2.5 hereof.

“**Yearly Limit**” shall have the meaning given in Section 2.1.5 hereof.

2. REGISTRATION RIGHTS.

2.1 Shelf Registration.

2.1.1 Filing. The Company shall, subject to Section 3.4 hereof, submit or file within 30 days of the Closing Date, and use commercially reasonable efforts to cause to be declared effective as soon as practicable thereafter, a Registration Statement for a Shelf Registration on Form S-1 (the “**Form S-1 Shelf**”) covering the resale of all the Initial Registrable Securities (determined as of two business days prior to such submission or filing) on a delayed or continuous basis and shall use its commercially reasonable efforts to have the Shelf declared effective after the filing thereof, but no later than the earlier of (a) the 60th calendar day following the filing date thereof if the Commission notifies the Company that it will “review” the Registration Statement and (b) the tenth business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review. Such Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. Subject to Sections 2.1.3 and 3.4 hereof, the Company shall maintain a Shelf in accordance with the terms hereof, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep a Shelf continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. In the event that the Company files a Form S-1 Shelf pursuant to this [Section 2.1.1](#), the Company shall use commercially reasonable efforts to convert the Form S-1 Shelf to a Form S-3 as soon as practicable after the Company is eligible to use Form S-3.

2.1.2 Issuer Shelf Registration. The Company shall, subject to Section 3.4 hereof, submit or file within 90 days of the Closing Date, and use commercially reasonable efforts to cause to be declared effective as soon as reasonably practicable thereafter, a Registration Statement on an appropriate form covering issuance and resale of the Additional Registrable Securities on a delayed or continuous basis (an “**Issuer Shelf Registration Statement**”). Such Shelf shall provide for the registered resale of all the Additional Registrable Securities by their Holders from time to time in accordance with the methods of distribution elected by the Holders and set forth therein. Subject to Sections 2.1.3 and 3.4 hereof, the Company shall maintain an Issuer Shelf Registration Statement in accordance with the terms hereof, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep an Issuer Shelf Registration Statement continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Additional Registrable Securities.

2.1.3 Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4 hereof, use its commercially reasonable efforts to, as promptly as is reasonably practicable, cause such Shelf to again become effective under the Securities Act (including using its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially reasonable efforts to, as promptly as is reasonably practicable, amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a “**Subsequent Shelf Registration**”) registering the resale of all Registrable Securities under such Shelf (determined as of two business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) at the most recent applicable eligibility determination date) and (ii) keep such Subsequent Shelf Registration continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities.

2.1.4 New Registrable Securities. Subject to Section 3.4 hereof, in the event that any Holder or Holders, collectively, hold Registrable Securities that are not registered for resale on a delayed or continuous basis, the Company, upon request of any Holder or the Sponsor, shall promptly use its commercially reasonable efforts to cause the resale of such Registrable Securities to be covered by either, at the Company’s option, any then-available Shelf (including by means of a post-effective amendment) or a Subsequent Shelf Registration and cause the same to become effective as soon as practicable after such filing and such Shelf or Subsequent Shelf Registration shall be subject to the terms hereof; *provided, however*, that, other than Registrable Securities held by AEA, (i) the Company shall only be required to cause such Registrable Securities to be so covered if the total offering price thereof is reasonably expected to exceed, in the aggregate, \$25 million and (ii) the Company shall only be required to cause such Registrable Securities to be so covered once per calendar year.

2.1.5 Requests for Underwritten Shelf Takedowns. Following the expiration of the applicable Lock-Up Period, at any time and from time to time when an effective Shelf is on file with the Commission, any Holder or the Sponsor (any of the Holders or the Sponsor, a **“Takedown Demanding Holder”**) may request to sell all or any portion of its Registrable Securities in an Underwritten Offering or other coordinated offering that is registered pursuant to the Shelf (each, an **“Underwritten Shelf Takedown”**); provided that, except for any Underwritten Shelf Takedown requested by AEA as a Takedown Demanding Holder (the **“AEA Initiating Holder”**), the Company shall only be obligated to effect an Underwritten Shelf Takedown if such offering shall include Registrable Securities proposed to be sold by the Takedown Demanding Holder, either individually or together with other Takedown Demanding Holders, with a total offering price reasonably expected to exceed, in the aggregate, \$25 million (the **“Minimum Takedown Threshold”**). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Shelf Takedown. The Company shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally recognized investment banks), subject to the initial Takedown Demanding Holder’s prior approval (which shall not be unreasonably withheld, conditioned or delayed). Underwritten Shelf Takedowns effected pursuant to this Section 2.1.5 shall be counted as Demand Registrations (including Underwritten Demand Registrations) effected pursuant to Section 2.2.

2.2 Demand Registration.

2.2.1 Request for Registration. At any time and from time to time, subject to compliance by the Holders with Section 3.4, and provided that there is not an effective Shelf Registration Statement available for the resale of the Registrable Securities pursuant to Section 2.1, any Holder or the Sponsor (any of the Holders or the Sponsor, a **“Demanding Holder”**) may make a written demand for Registration under the Securities Act of all or any portion of their Registrable Securities on Form S-1 or any similar long-form Registration or, if then available, on Form S-3. Each registration requested pursuant to this Section 2.2 is referred to herein as a **“Demand Registration.”** Any demand for a Demand Registration shall specify the number of shares of Registrable Securities proposed to be sold and the intended method(s) of distribution thereof. The Company will notify the Sponsor and all Holders of the demand, and each such holder of Registrable Securities who wishes to include all or a portion of such holder’s Registrable Securities in the Demand Registration (each such holder including shares of Registrable Securities in such registration, a **“Demanding Holder”**) shall so notify the Company within twenty (20) calendar days after the receipt by the holder of the notice from the Company. Upon any such request, the Demanding Holders shall be entitled to have their Registrable Securities included in the Demand Registration, subject to Section 2.2.4 and the provisos set forth in Section 3.1.1. Number of Demand Registrations. Each of (i) the Sponsor, (ii) AEA and (iii) the Holders other than AEA may demand Demand Registrations pursuant to Section 2.1.5 or Section 2.2 (1) not more than two times in any 12-month period (the **“Yearly Limit”**) and (2) not more than five times in the aggregate (the **“Total Limit”**). Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then-effective Registration Statement, including a Form S-3, that is then available for such offering.

2.2.2 Effective Registration. A Registration will not count as a Demand Registration until the Registration Statement filed with the Commission with respect to such Demand Registration has been declared effective and the Company has complied with all of its obligations under this Agreement with respect thereto; provided, however, that if, after such Registration Statement has been declared effective, the offering of Registrable Securities pursuant to a Demand Registration is interfered with by any stop order or injunction of the Commission or any other governmental agency or court, the Registration Statement with respect to such Demand Registration will be deemed not to have been declared effective, unless and until, (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders (or AEA, in the event that AEA is the Demanding Holder for a Demand Registration) thereafter elect to continue the offering; provided, further, that the Company shall not be obligated to file a second Registration Statement until a Registration Statement that has been filed is counted as a Demand Registration or is terminated.

2.2.3 Underwritten Demand Registration. If the Demanding Holders so elect and such holders so advise the Company as part of their written demand for a Demand Registration, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an Underwritten Demand Registration. In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such holder's Registrable Securities in the underwriting to the extent provided herein. All Demanding Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such underwriting by the holders initiating the Demand Registration, and subject to the approval of the Company.

2.2.4 Reduction of Underwritten Offering. If the managing Underwriter or Underwriters for an Underwritten Offering advises the Company, the Takedown Demanding Holders, the Demanding Holders and the Holders requesting registration pursuant to Section 2.3 of this Agreement with respect to such Underwritten Offering (the "**Requesting Holders**") in writing that the dollar amount or number of shares of Registrable Securities which the Takedown Demanding Holders or Demanding Holders, as applicable, and the Requesting Holders desire to sell, taken together with all other shares of Common Stock or other securities which the Company desires to sell and the shares of Common Stock, if any, that have been requested to be sold in such Underwritten Offering pursuant to written contractual Piggy-Back Registration rights held by other stockholders of the Company who desire to sell, exceeds the maximum dollar amount or maximum number of shares that can be sold in such Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of shares, as applicable, the "**Maximum Number of Shares**"), then (1) in the case of an Underwritten Offering requested by an initial Takedown Demanding Holder or Demanding Holder, as applicable, other than AEA, the Company shall include in such Underwritten Offering (i) first, the Registrable Securities of the Takedown Demanding Holders or Demanding Holders, as applicable, and Requesting Holders (pro rata in accordance with the number of Registrable Securities that each such Person has requested be included in such Underwritten Offering, regardless of the number of shares held by each such Person (such proportion is referred to herein as "**Pro Rata**")) that can be sold without exceeding the Maximum Number of Shares, and (ii) second, the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares, and (2) in the case of an Underwritten Offering requested by the AEA Initiating Holder, the Company shall include in such Underwritten Offering (i) first, the Registrable Securities of the AEA Initiating Holder that can be sold without exceeding the Maximum Number of Shares, (ii) second, the Registrable Securities of any other Holders Pro Rata that can be sold without exceeding the Maximum Number of Shares, and (iii) third, the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares.

2.2.5 Withdrawal. Prior to the filing of the applicable "red herring" prospectus or prospectus supplement used for marketing such Underwritten Offering, a majority-in-interest of the Takedown Demanding Holders or Demanding Holders, as applicable, initiating an Underwritten Offering (or, in the case of an Underwritten Offering requested by the AEA Initiating Holder, AEA) may elect to withdraw from such Underwritten Offering for any or no reason whatsoever by giving written notice (a "**Withdrawal Notice**") to the Company and the Underwriter or Underwriters (if any) of their request to withdraw from such Underwritten Offering; provided that any other Takedown Demanding Holder(s) or Demanding Holder(s), as applicable, may elect to have the Company continue an Underwritten Shelf Takedown if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Shelf Takedown by the Takedown Demanding Holder(s) or Demanding Holder(s), as applicable. If withdrawn, a demand for an Underwritten Offering shall not constitute a demand for an Underwritten Offering by the withdrawing Takedown Demanding Holder or Demanding Holder, as applicable, for purposes of Section 2.1.5 hereof and shall not count toward the Yearly Limit and the Total Limit; provided that, if any other Takedown Demanding Holder(s) or Demanding Holder(s), as applicable, elects to continue an Underwritten Offering pursuant to the proviso in the immediately preceding sentence, such Underwritten Offering shall instead count as an Underwritten Offering demanded by the Takedown Demanding Holders or Demanding Holders, as applicable, for purposes of Section 2.1.5 hereof and shall count toward the Yearly Limit and the Total Limit (except that for any Underwritten Offering in which AEA represents a majority-in-interest of the Takedown Demanding Holders or Demanding Holders, as applicable, and elects to withdraw pursuant to this Section 2.1.7, if such Underwritten Offering continues at the election of any other Takedown Demanding Holder(s) or Demanding Holder(s), as applicable, such Underwritten Shelf Takedown shall not count toward the Yearly Limit and the Total Limit with respect to AEA). Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Requesting Holders. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Shelf Takedown prior to its withdrawal under this Section 2.2.5.

2.3 Piggy-Back Registration.

2.3.1 Piggy-Back Rights. If the Company or any Holder proposed to consummate a registered offering of, or if the Company proposes to file a Registration Statement under the Securities Act with respect to the Registration of, equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, for its own account or for stockholders of the Company for their account (or by the Company and by stockholders of the Company including, without limitation, an Underwritten Offering pursuant to Section 2.1 or Section 2.2), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing stockholders, (iii) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (iv) for an offering of debt that is convertible into equity securities of the Company or (v) for a dividend reinvestment plan, then the Company shall (x) give written notice of such proposed offering to the Sponsor and Holders as soon as practicable but in no event less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the applicable "red herring" prospectus or prospectus supplement used for marketing such offering, which notice shall describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to the Sponsor and Holders in such notice the opportunity to include in such registered offering such number of shares of Registrable Securities as such Persons may request in writing within five (5) days following receipt of such notice (a "**Piggy-Back Registration**"). Subject to Section 2.3.2 hereof, the Company shall cause such Registrable Securities to be included in such Piggy-Back Registration and, if applicable, shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of such Piggy-Back Registration to permit the Registrable Securities requested by the Sponsor or Holder pursuant to this Section 2.3.1 to be included therein on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. The inclusion of the Sponsor's or any Holder's Registrable Securities in a Piggy-Back Registration shall be subject to such Person's agreement to enter into an underwriting agreement and "lock-up" agreement, in each case, in customary form with the Underwriter or Underwriters selected for such Underwritten Offering.

2.3.2 Reduction of Piggy-Back Registration. If the managing Underwriter or Underwriters for a Piggy-Back Registration that is to be an Underwritten Offering advises the Company and the Sponsor and Holders participating in the Piggy-Back Registration in writing that the dollar amount or number of shares of Common Stock or other equity securities that the Company or the Sponsor or Holders desires to sell, taken together with shares of Common Stock or other equity securities, if any, as to which Registration or registered offering has been demanded pursuant to separate written contractual arrangements with persons or entities other than the holders of Registrable Securities hereunder, the Registrable Securities as to which Registration has been requested under this Section 2.3, and the shares of Class A Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to the written contractual piggy-back registration rights of other stockholders of the Company, exceeds the Maximum Number of Shares, then:

(a) If the Registration or registered offering is undertaken for the Company's account, the Company shall include in any such Registration or registered offering: (A) first, the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; (B) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (A), the Registrable Securities of the Sponsor and Holders exercising their rights to register their Registrable Securities pursuant to Section 2.3.1 hereof, pro rata, based on the respective number can be sold without exceeding the Maximum Number of Shares; and (C) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other securities, if any, as to which Registration or a registered offering has been requested pursuant to written contractual Piggy-Back Registration rights with such persons and that can be sold without exceeding the Maximum Number of Shares;

(b) If the Registration or registered offering is a “demand” registration undertaken at the demand of persons other than either the Sponsor and Holders, then the Company shall include in any such Registration or registered offering: (A) first, the shares of Common Stock or other securities for the account of the demanding persons that can be sold without exceeding the Maximum Number of Shares; (B) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (A), the shares of Common Stock or other securities comprised of Registrable Securities, Pro Rata, as to which registration has been requested pursuant to the terms hereof, that can be sold without exceeding the Maximum Number of Shares; (C) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A) and (B), collectively, the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; and (D) fourth, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (A), (B) and (C), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to register pursuant to written contractual arrangements with such persons, that can be sold without exceeding the Maximum Number of Shares; and

(c) If the Registration or registered offering is pursuant to a request by the Sponsor or Holder(s) pursuant to Section 2.1 hereof, then the Company shall include in any such Registration or registered offering securities in the priority set forth in Section 2.2.4 hereof.

2.3.3 Withdrawal. Any holder of Registrable Securities (other than a Takedown Demanding Holder or Demanding Holder, as applicable, whose right to withdraw from an Underwritten Offering, and related obligations, shall be governed by Section 2.2.5 hereof) may elect to withdraw such holder’s request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement with respect to such Piggy-Back Registration or, in the case of a Piggy-Back Registration pursuant to a Shelf Registration, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggy-Back Registration used for marketing such transaction. The Company (whether on its own determination or as the result of a withdrawal by persons or entities making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Registration Statement. Notwithstanding any such withdrawal, the Company shall pay all expenses incurred by the holders of Registrable Securities in connection with such Piggy-Back Registration as provided in Section 3.3.

2.3.4 Unlimited Piggy-Back Registration Rights. For the avoidance of doubt, any Piggy-Back Registration effected pursuant to Section 2.3 hereof shall not be counted as a demand for an Underwritten Offering under Section 2.1 or Section 2.2 hereof and shall not count toward the Yearly Limit or the Total Limit. The holders of Registrable Securities may participate in an unlimited number of Piggy-Back Registrations.

2.4 Market Stand-off. In connection with any Underwritten Offering of equity securities of the Company or any Company-initiated Registration for the account of the Company (subject to the Company’s compliance with Section 2.3 hereof), each Holder that is an executive officer, director or Holder in excess of 1.0% of the then-outstanding Class A Common Stock agrees that it shall not Transfer any shares of Class A Common Stock or other equity securities of the Company (other than those included in such offering pursuant to this Agreement), without the prior written consent of the Company, during the 90-day period (or such shorter time agreed to by the managing Underwriters) beginning on the date of pricing of such offering (the “**Underwritten Lock-Up Period**”), except as expressly permitted by such lock-up agreement or in the event the Underwriters managing the offering otherwise consent in writing. Each Holder agrees to execute a customary lock-up agreement in favor of the Underwriters to such effect (in each case on substantially the same terms and conditions as the Company’s directors and executive officers or the other stockholders of the Company). Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders that are subject to such agreements, based on the number of shares subject to such agreements. The Company will not be obligated to undertake an Underwritten Offering during any Underwritten Lock-Up Period binding on the Holders, nor will the Company be obligated to include in any Piggy-Back Registration any Registrable Securities that are then subject to a “lock-up” agreement.

3. REGISTRATION PROCEDURES.

3.1 Filings; Information. In connection with any Shelf and/or Shelf Takedown, the Company shall use its commercially reasonable efforts to effect the Registration and permit the sale of such Registrable Securities in accordance with the intended method(s) of distribution thereof as expeditiously as practicable, and in connection with any such request:

3.1.1 Filing Registration Statement. The Company shall use its commercially reasonable efforts to, as expeditiously as reasonably practicable, prepare and file with the Commission a Registration Statement on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the sale of all Registrable Securities to be registered thereunder in accordance with the intended method(s) of distribution thereof, and shall use its commercially reasonable efforts to cause such Registration Statement to become effective and use its commercially reasonable efforts to keep it effective until all Registrable Securities have ceased to be Registrable Securities.

3.1.2 Copies. The Company shall, prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto, furnish without charge to the Underwriters, if any, and the Sponsor and Holders of Registrable Securities included in such Registration, and the Sponsor's and such Holders' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary prospectus), and such other documents as the Underwriters, if any, and the Sponsor and Holders of Registrable Securities included in such Registration or legal counsel for the Sponsor and any such Holders may request in order to facilitate the disposition of the Registrable Securities owned by the Sponsor and such Holders.

3.1.3 Amendments and Supplements. The Company shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such Registration Statement and the Prospectus used in connection therewith, as may be reasonably requested by any Holder of Registrable Securities that holds at least 5% percent of the Registrable Securities registered on such Registration Statement or any Underwriter of Registrable Securities or as may be necessary to keep such Registration Statement effective and in compliance with the provisions of the Securities Act until all Registrable Securities and other securities covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn.

3.1.4 Notification. After the filing of a Registration Statement, the Company shall promptly, and in no event more than two (2) business days after such filing, notify the holders of Registrable Securities included in such Registration Statement of such filing, and shall further notify such holders promptly and confirm such advice in writing in all events within two (2) business days of the occurrence of any of the following: (i) when such Registration Statement becomes effective; (ii) when any post-effective amendment to such Registration Statement becomes effective; (iii) the issuance or threatened issuance by the Commission of any stop order (and the Company shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (iv) any request by the Commission for any amendment or supplement to such Registration Statement or any prospectus relating thereto or for additional information or of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the securities covered by such Registration Statement, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and promptly make available to the holders of Registrable Securities included in such Registration Statement any such supplement or amendment; except that before filing with the Commission a Registration Statement or prospectus or any amendment or supplement thereto, including documents incorporated by reference, the Company shall furnish to the holders of Registrable Securities included in such Registration Statement and to the legal counsel for any such holders, copies of all such documents proposed to be filed sufficiently in advance of filing to provide such holders and legal counsel with a reasonable opportunity to review such documents and comment thereon, and the Company shall not file any Registration Statement or prospectus or amendment or supplement thereto, including documents incorporated by reference, to which such holders or their legal counsel shall object.

3.1.5 State Securities Laws Compliance. The Company shall use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or “blue sky” laws of such jurisdictions in the United States as the Sponsor and Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence reasonably satisfactory to the Sponsor and such Holders that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Sponsor and Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; *provided, however*, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or subject itself to taxation in any such jurisdiction.

3.1.6 Agreements for Disposition. The Company shall enter into customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities. The representations, warranties and covenants of the Company in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of the holders of Registrable Securities included in such registration statement. No Holder of Registrable Securities included in such registration statement shall be required to make any representations or warranties in the underwriting agreement except, if applicable, with respect to such Holder’s organization, good standing, authority, title to Registrable Securities, lack of conflict of such sale with such Holder’s material agreements and organizational documents, and with respect to written information relating to such Holder that such Holder has furnished in writing expressly for inclusion in such Registration Statement.

3.1.7 Cooperation. The principal executive officer of the Company, the principal financial officer of the Company, the principal accounting officer of the Company and all other officers and members of the management of the Company shall cooperate fully in any offering of Registrable Securities hereunder, which cooperation shall include, without limitation, the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with Underwriters, attorneys, accountants and potential Holders.

3.1.8 Records. The Company shall make available for inspection by the Sponsor and Holders of Registrable Securities included in such Registration Statement, any Underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any holder of Registrable Securities included in such Registration Statement or any Underwriter, all financial and other records, pertinent corporate documents and properties of the Company, as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Company’s officers, directors and employees to supply all information requested by any of them in connection with such Registration Statement; *provided, however*, that the Sponsor, such Holders or Underwriters enter into a confidentiality agreement, in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information.

3.1.9 Opinions and Comfort Letters. The Company shall: (i) on the date the Registrable Securities are delivered for sale pursuant to such Registration, if requested by the Underwriter(s), if any, obtain an opinion and negative assurance letter, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion and negative assurance letter are being given as are customarily included in such opinions and negative assurance letters, as well as furnish to the Sponsor and each Holder of Registrable Securities included in such Registration, addressed to such Person, such opinion (but, for avoidance of doubt, not such “negative assurance letter”) (provided that such opinion need not permit the Sponsor or such Holders to rely on provisions or paragraphs of such opinion not customarily relied upon by selling securityholders); and (ii) obtain a “cold comfort” letter, and a bring-down thereof, from the Company’s independent registered public accountants in the event of an Underwritten Offering which the participating Holders may rely on, in customary form and covering such matters of the type customarily covered by “cold comfort” letters as the managing Underwriter may reasonably request. In the event no legal opinion is delivered to any Underwriter, the Company shall furnish to each Holder of Registrable Securities included in such Registration Statement, at any time that such Holder elects to use a prospectus, a customary opinion of counsel to the Company to the effect that the Registration Statement containing such prospectus has been declared effective and that no stop order is in effect.

3.1.10 Earnings Statement. The Company shall comply with all applicable rules and regulations of the Commission and the Securities Act, and make available to its stockholders, as soon as reasonably practicable, an earnings statement covering a period of twelve (12) months beginning with the first day of the Company’s first full calendar quarter after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

3.1.11 Listing; Transfer Agent. The Company shall use its commercially reasonable efforts to cause all Registrable Securities included in any registration to be listed on such exchanges or otherwise designated for trading in the same manner as similar securities issued by the Company are then listed or designated or, if no such similar securities are then listed or designated, in a manner satisfactory to the holders of a majority of the Registrable Securities included in such registration (which majority must include AEA, if Registrable Securities of AEA are included in such registration). The Company shall provide a transfer agent or warrant agent, as applicable, and registrar for all Registrable Securities no later than the effective date of such Registration Statement.

3.1.12 Road Show. If the registration involves the registration of Registrable Securities involving anticipated gross proceeds in excess of \$25 million, the Company shall use its reasonable efforts to make available senior executives of the Company to participate in customary “road show” presentations that may be reasonably requested by the Underwriter in any Underwritten Offering (it being agreed that such “road show” may utilize videoconferencing).

3.2 Obligation to Suspend Distribution; Adverse Disclosure. Upon receipt of written notice from the Company of the happening of any event of the kind described in Section 3.1.4(iv), each holder of Registrable Securities included in any registration shall immediately discontinue disposition of such Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such holder receives the supplemented or amended Prospectus contemplated by Section 3.1.4(iv), or until it is advised in writing by the Company that the use of the Prospectus may be resumed. If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would require the Company to make an Adverse Disclosure or would require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company’s control, the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event more than ninety (90) days in any 12-month period, determined in good faith by the Company to be necessary for such purpose. In the event the Company exercises its rights under the preceding sentence, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to such Registration in connection with any sale or offer to sell Registrable Securities. The Company shall immediately notify the Holders of the expiration of any period during which it exercised its rights under this Section 3.3.

3.3 Registration Expenses. The Company shall bear all Registration Expenses incurred in connection with any Registrations, and all expenses incurred in performing or complying with its other obligations under this Agreement, whether or not the Registration Statement becomes effective. The Company shall have no obligation to pay any underwriting discounts or selling commissions attributable to the Registrable Securities being sold by the Holders thereof, which underwriting discounts or selling commissions shall be borne by such Holders. Additionally, in an underwritten offering, all Holders and the Company shall bear the expenses of the Underwriter pro rata in proportion to the respective amount of shares each is selling in such offering.

3.4 Information. The holders of Registrable Securities shall provide such information as may reasonably be requested by the Company, or the managing Underwriter, if any, in connection with the preparation of any Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 2 and in connection with the Company's obligation to comply with federal and applicable state securities laws. In addition, each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder.

3.5 Other Obligations. At any time and from time to time in connection with a sale or transfer of Registrable Securities exempt from registration under the Securities Act or through any broker-dealer transactions described in the plan of distribution set forth within any prospectus and pursuant to the Registration Statement of which such prospectus forms a part, the Company shall, subject to the receipt of customary documentation required from the applicable holders in connection therewith and compliance with applicable laws, (i) promptly instruct its transfer agent to remove any restrictive legends applicable to the Registrable Securities being sold or transferred and (ii) cause its legal counsel to deliver the necessary legal opinions, if any, to the transfer agent in connection with the instruction under subclause clause (i). In addition, the Company shall cooperate reasonably with, and take such customary actions as may reasonably be requested by such holders in connection with the aforementioned sales or transfers.

4. INDEMNIFICATION AND CONTRIBUTION.

4.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless the Sponsor and each Holder and each other holder of Registrable Securities, and each of their respective officers, employees, Affiliates, directors, partners, members, attorneys and agents, and each person, if any, who controls an Holder and each other holder of Registrable Securities (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, an "**Holder Indemnified Party**"), from and against any expenses, losses, judgments, claims, damages or liabilities, whether joint or several, arising out of or based upon any untrue statement (or allegedly untrue statement) of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arising out of or based upon any omission (or alleged omission) to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration; and the Company shall promptly reimburse the Holder Indemnified Party for any reasonable legal and any other reasonable out-of-pocket expenses reasonably incurred by such Holder Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action whether or not any such person is a party to any such claim or action and including any and all legal and other expenses incurred in giving testimony or furnishing documents in response to a subpoena or otherwise; *provided, however*, that the Company will not be liable in any such case to the extent that any such expense, loss, claim, damage or liability arises out of or is based upon any untrue statement or allegedly untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by or on behalf of such Holder Indemnified Party expressly for use therein. The Company also shall indemnify any Underwriter of the Registrable Securities, their officers, Affiliates, directors, partners, members and agents and each person who controls such Underwriter on substantially the same basis as that of the indemnification provided above in this Section 4.1.

4.2 Indemnification by Holders of Registrable Securities. Subject to the limitations set forth in Section 4.4.3 hereof, each Holder of Registrable Securities will, in the event that any registration is being effected under the Securities Act pursuant to this Agreement of any Registrable Securities held by such Holder, indemnify and hold harmless the Company, each of its directors, officers, agents and each person who controls the Company, against any losses, claims, judgments, damages or liabilities, whether joint or several, insofar as such losses, claims, judgments, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement (or allegedly untrue statement) of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission (or the alleged omission) to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of such Holder expressly for use therein, and shall reimburse the Company, its directors and officers, and each other selling holder or controlling person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, claim, damage, liability or action. Each Holder's indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such Holder.

4.3 Conduct of Indemnification Proceedings. Promptly after receipt by any person of any notice of any loss, claim, damage or liability or any action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such person (the "**Indemnified Party**") shall, if a claim in respect thereof is to be made against any other person for indemnification hereunder, promptly notify such other person (the "**Indemnifying Party**") in writing of the loss, claim, judgment, damage, liability or action; *provided, however*, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; *provided, however*, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written advice of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

4.4 Contribution.

4.4.1 If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable or insufficient to hold harmless any Indemnified Party in respect of any expenses, loss, claim, damage, liability or action referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such loss, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such Indemnified Party or such Indemnifying Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

4.4.2 The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding Section 4.4.1.

4.4.3 The amount paid or payable by an Indemnified Party as a result of any loss, claim, damage, liability or action referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4, no holder of Registrable Securities shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such holder from the sale of Registrable Securities which gave rise to such contribution obligation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) with respect to any action shall be entitled to contribution in such action from any person who was not guilty of such fraudulent misrepresentation. The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person or entity of such indemnified party and shall survive the transfer of securities. The Company and each holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company's or such Holder's indemnification is unavailable for any reason.

4.4.4 Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in any underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provision in the underwriting agreement shall control.

5. UNDERWRITING AND DISTRIBUTION.

5.1 Rule 144. The Company covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as the holders of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission. Upon the request of any Holder, the Company will deliver to such Holder a written statement of a duly authorized officer as to whether the Company has complied with such information requirements, and, if not, the specific reasons for non-compliance.

5.2 Restrictive Legends. In connection with a Registration Statement, the Company shall, if requested by a Holder, take commercially reasonable efforts to (i) cause the removal of any restrictive legend related to compliance with the federal securities laws set forth on the Registrable Securities, (ii) cause its legal counsel to deliver to the transfer agent a customary instruction letter or opinion, if required by the transfer agent, in connection with removal of such restrictive legend, and (iii) issue Registrable Securities without any such legend in certificated or book-entry form or by electronic delivery through The Depository Trust Company, at the Holder's option, as soon as practicable following such request. The Company's obligation to remove legends under this Section 5.2 may be conditioned upon the Holder providing such representations, agreements and documentation as are reasonably necessary, customarily required, or reasonably requested, in connection with the removal of federal securities laws restrictive legends.

6. LOCK-UP.

6.1 Lock-Up. Subject to Section 6.2 hereof, the Sponsor and the Holders (other than AEA) agree that they shall not Transfer any Lock-Up Shares until the end of the applicable Lock-Up Period (the "**Lock-Up**").

6.2 Permitted Transferees. Notwithstanding the provisions set forth in Section 6.1 hereof, the Sponsor, the Holders or their respective Permitted Transferees may Transfer the Lock-Up Shares during the Lock-Up Period to: (a) the Company's officers or directors, any Affiliates or family members of any of Company's officers or directors, the Sponsor, any Affiliate of the Sponsor or to any member(s) of the Sponsor, any Affiliates of such members and funds and accounts advised by such members, or any limited partners of any such funds that are invested in the Sponsor; (b) in the case of an individual, a transferee by gift to a member of such individual's immediate family or to a trust, the beneficiary of which is a member of such individual's immediate family, an Affiliate of such individual or to a charitable organization; (c) in the case of an individual, a transferee by virtue of the laws of descent and distribution upon death of such person; (d) in the case of an individual, a transferee pursuant to a qualified domestic relations order; (e) an entity that is an Affiliate of the holder; (f) a transferee by virtue of the laws of the State of Delaware or the Sponsor's limited liability company agreement upon dissolution of the Sponsor; (g) a transferee in the event of the Company's liquidation, merger, capital stock exchange, reorganization or other similar transaction which results in all of the Company's stockholders having the right to exchange their shares of Common Stock for cash, securities or other property subsequent to the completion of an initial Business Combination; or (h) the Company for no value for cancellation in connection with the consummation of the Company's initial Business Combination; *provided, however*, that, in the case of clauses (a) through (g) these permitted transferees must enter into a written agreement with the Company agreeing to be bound by the transfer restrictions and the other restrictions contained herein.

7. MISCELLANEOUS.

7.1 Other Registration Rights. The Company represents and warrants that no person or entity, other than the Sponsor and the Holders, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration Statement filed by the Company for the sale of securities for its own account or for the account of any other person or entity. The Company (i) represents and warrants that no subscription agreement or warrant agreement has been amended in any manner since its applicable effective date and (ii) shall not amend the subscription agreements or the warrant agreements in any manner that would provide to any party thereto registration rights superior to the rights of the other Holders set forth herein unless the Company amends this Agreement to provide substantially similar rights to the other Holders. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions among the parties hereto, and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail.

7.2 Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part, except with the consent of the Sponsor and each Holder party hereto. This Agreement and the rights, duties and obligations of the holders of Registrable Securities hereunder may be freely assigned or delegated by such holder of Registrable Securities in conjunction with and to the extent of any transfer of Registrable Securities by any such holder. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties, to the permitted assigns of the Sponsor, Holders or holder of Registrable Securities or of any assignee of the Sponsor, Holders or holder of Registrable Securities. This Agreement is not intended to confer any rights or benefits on any persons that are not party hereto other than as expressly set forth in Article 3.5 and this Section 7.2.

7.3 Notices. All notices, demands, requests, consents, approvals or other communications (collectively, “**Notices**”) required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be personally served, delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice. Notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, telex or facsimile; provided, that if such service or transmission is not on a business day or is after normal business hours, then such notice shall be deemed given on the next business day. Notice otherwise sent as provided herein shall be deemed given on the next business day following timely delivery of such notice to a reputable air courier service with an order for next-day delivery.

(a) If the Company, to:

American Oncology Network, Inc.
14543 Global Pkwy STE 110
Fort Myers, FL 33913
Attention:
E-mail:

with a copy (which shall not constitute notice) to

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Ilan Katz and Brian Lee
Email: ilan.katz@dentons.com and brian.lee@dentons.com

(b) If to the Sponsor or any Holder other than AEA, to the address set forth below AEA’s name on Exhibit A hereto. Any notice to AEA shall include a copy (which shall not constitute notice) to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: Seth Gottlieb and Sepideh Mousakhani
Email: sgottlieb@cooley.com and smousakhani@cooley.com

7.4 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible that is valid and enforceable.

7.5 Counterparts. This Agreement may be executed in multiple counterparts (including facsimile or PDF counterparts), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by facsimile or email/pdf transmission shall constitute valid and sufficient delivery thereof.

7.6 Entire Agreement. This Agreement (including all agreements entered into pursuant hereto and all certificates and instruments delivered pursuant hereto and thereto) constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written.

7.7 Modifications and Amendments. Upon the written consent of (i) the Company and (ii) the Holders of at least a majority-in-interest of the Registrable Securities at the time in question (which majority-in-interest must include AEA), compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; *provided, however*, that, notwithstanding the foregoing, any amendment hereto or waiver hereof that adversely affects the Sponsor or one Holder, solely in his, her or its capacity as a holder of the shares of capital stock of the Company, in a manner that is materially different from the other Holders (in such capacity), shall require the consent of the Sponsor or Holder so affected. No course of dealing between the Sponsor, any Holder or the Company and any other party hereto or any failure or delay on the part of the Sponsor, a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of the Sponsor, any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party.

7.8 Titles and Headings. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

7.9 Waivers and Extensions. Any party to this Agreement may waive any right, breach or default which such party has the right to waive, provided that such waiver will not be effective against the waiving party unless it is in writing, is signed by such party, and specifically refers to this Agreement. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

7.10 Remedies Cumulative. In the event that the Company fails to observe or perform any covenant or agreement to be observed or performed under this Agreement, the Sponsor, Holder or any other holder of Registrable Securities may proceed to protect and enforce its rights by suit in equity or action at law, whether for specific performance of any term contained in this Agreement or for an injunction against the breach of any such term or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right, or to take any one or more of such actions, without being required to post a bond. None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

7.11 Governing Law. Venue. Waiver of Trial by Jury. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement, shall be governed by, and construed in accordance with, the internal substantive laws of the State of Delaware applicable to contracts entered into and to be performed solely within such state, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of laws of another jurisdiction. Any action based upon, arising out of or related to this Agreement may be brought in federal and state courts located in the State of Delaware, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such action, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the action shall be heard and determined only in any such court, and agrees not to bring any action arising out of or relating to this Agreement in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any action brought pursuant to this Section 7.11. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

7.12 Term. This Agreement shall terminate upon the earlier of (i) the tenth anniversary of the date of this Agreement and (ii) with respect to the Sponsor or any Holder, the date that such Person no longer holds any Registrable Securities.

7.13 Additional Holders; Joinder. In addition to persons or entities who may become Holders pursuant to Section 6.2 hereof, the Company may make any person or entity who acquires Class A Common Stock or rights to acquire Class A Common Stock after the date hereof a party to this Agreement (each such person or entity, an “**Additional Holder**”) by obtaining an executed joinder to this Agreement from such Additional Holder in the form of Exhibit A attached hereto (a “**Joinder**”). Such Joinder shall specify the rights and obligations of the applicable Additional Holder under this Agreement. Upon the execution and delivery and subject to the terms of a Joinder by such Additional Holder, the Class A Common Stock of the Company then owned, or underlying any rights then owned, by such Additional Holder (the “**Additional Holder Common Stock**”) shall be Registrable Securities to the extent provided herein and therein, and such Additional Holder shall be a Holder under this Agreement with respect to such Additional Holder Common Stock.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY:

**AMERICAN ONCOLOGY NETWORK, INC.,
a Delaware corporation**

By: /s/ Todd Schonherz

Name: Todd Schonherz

Title: Chief Executive Officer

SPONSOR:

**DIGITAL TRANSFORMATION SPONSOR LLC,
a Delaware limited liability company**

By: /s/ Kevin Nazemi

Name: Kevin Nazemi

Title: Manager

HOLDERS:

AEA GROWTH EQUITY FUND LP

By: AEA Growth Equity Partners LP, its general partner

By: AEA Growth Equity GP LLC, its general partner

By: /s/ Michelle Marcellus

Name: Michelle Marcellus

Title: Vice President

AEA GROWTH EQUITY FUND (PARALLEL) LP

By: AEA Growth Equity Partners LP, its general partner

By: AEA Growth Equity GP LLC, its general partner

By: /s/ Michelle Marcellus

Name: Michelle Marcellus

Title: Vice President

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

By: /s/ Kyle Francis

Name: Kyle Francis

By: /s/ Bradley Fluegel

Name: Bradley Fluegel

By: /s/ Jim Moffatt

Name: Jim Moffatt

By: /s/ Heather Zynczak

Name: Heather Zynczak

EXHIBIT A

REGISTRATION RIGHTS AGREEMENT
JOINDER

The undersigned is executing and delivering this joinder (this “*Joinder*”) pursuant to the Registration Rights Agreement, dated as of [____], 2023 (as the same may hereafter be amended, the “*Registration Rights Agreement*”), among American Oncology Network, Inc. (formerly known as Digital Transformation Opportunities Corp.), a Delaware corporation (the “*Company*”), and the other persons or entities named as parties therein. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, and upon acceptance hereof by the Company upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by and to comply with the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement, and the undersigned’s shares of Class A Common Stock shall be included as Registrable Securities under the Registration Rights Agreement to the extent provided therein; *provided, however*, that the undersigned and its permitted assigns (if any) shall not have any rights as Holders, and the undersigned’s (and its transferees’) shares of Class A Common Stock shall not be included as Registrable Securities, for purposes of the Excluded Sections.

For purposes of this Joinder, “*Excluded Sections*” shall mean [].

Accordingly, the undersigned has executed and delivered this Joinder as of the _____ day of _____, 20__.

Signature of Stockholder

Print Name of Stockholder

Its: _____

Address: _____

AMERICAN ONCOLOGY NETWORK, INC.

2023 INCENTIVE EQUITY PLAN

1. Purposes of the Plan; Award Types.

(a) Purposes of the Plan. The purposes of this Plan are to attract and retain personnel for positions with the Company Group, to provide additional incentive to Employees, Directors, and Consultants (collectively, "Service Providers"), and to promote the success of the Company's business.

(b) Award Types. The Plan permits the grant of Incentive Stock Options ("ISO") to any ISO Employee and the grant of Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, and Performance Awards to any Service Provider.

2. Definitions. The following definitions are used in this Plan:

(a) "Administrator" means Administrator as defined in Section 4(a).

(b) "Applicable Laws" means the legal and regulatory requirements relating to the administration of equity-based awards, including but not limited to the related issuance of Shares under U.S. federal and state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and, only to the extent applicable with respect to an Award or Awards, the tax, securities, exchange control, and other laws of any jurisdictions other than the United States where Awards are, or will be, granted under the Plan. Reference to a section of an Applicable Law or regulation related to that section shall include such section or regulation, any valid regulation issued under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(c) "Award" means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, or Performance Awards.

(d) "Award Agreement" means the written or electronic agreement setting forth the terms applicable to an Award granted under the Plan. The Award Agreement is subject to the terms of the Plan.

(e) "Board" means the Board of Directors of the Company.

(f) "Change in Control" means the occurrence of any of the following events:

(i) A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company; provided, that for this subsection, the acquisition of additional stock by any one Person, who prior to such acquisition is considered to own more than 50% of the total voting power of the stock of the Company will not be considered a Change in Control and provided, further, that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Board also will not be considered a Change in Control. Further, if the stockholders of the Company immediately before such change in ownership continue to retain immediately after the change in ownership, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately prior to the change in ownership, direct or indirect beneficial ownership of 50% or more of the total voting power of the stock of the Company or of the ultimate parent entity of the Company, such event shall not be considered a Change in Control under this Section 2(f)(i). For this purpose, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company, as the case may be, either directly or through one or more subsidiary corporations or other business entities; or

(ii) A change in the effective control of the Company which occurs on the date a majority of members of the Board is replaced during any 12-month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the appointment or election. For purposes of this Section 2(f)(ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, that for this Section 2(f)(iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets:

(1) a transfer to an entity controlled by the Company's stockholders immediately after the transfer, or

(2) a transfer of assets by the Company to:

(A) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock,

(B) an entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company,

(C) a Person, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the Company, or

(D) an entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a Person described in Section 2(f)(iii)(2)(A) to Section 2(f)(iii)(2)(C).

For this definition, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. For this definition, persons will be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. For the avoidance of doubt, wholly-owned subsidiaries of the Company shall not be considered "Persons" for purposes of this Section 2(f).

(iv) A transaction will not be a Change in Control:

(1) unless the transaction qualifies as a change in control event within the meaning of Code Section 409A; or

(2) if its primary purpose is to (1) change the jurisdiction of the Company's incorporation, or (2) create a holding company owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(g) "Code" means the U.S. Internal Revenue Code of 1986, as amended. Reference to a section of the Code or regulation related to that section shall include such section or regulation, any valid regulation issued or other official applicable guidance of general or direct applicability promulgated under such section or regulation, and any comparable provision of any future legislation, regulation or official guidance of general or direct applicability amending, supplementing or superseding such section or regulation.

(h) "Committee" means a committee of Directors or of other individuals satisfying Applicable Laws appointed by the Board.

(i) "Common Stock" means the Class A common stock of the Company.

(j) "Company" means American Oncology Network, Inc., a Delaware corporation, or any of its successors.

(k) "Company Group" means the Company, American Oncology Partners of Maryland, P.A. and American Oncology Partners, P.A. and any corporation, partnership, limited liability company or other entity in which any of the foregoing own, directly or indirectly, equity securities with a majority of the voting power.

(l) "Consultant" means any natural person engaged by a member of the Company Group to render bona fide services to such entity, provided the services (i) are not in connection with the offer or sale of securities in a capital raising transaction, and (ii) do not directly promote or maintain a market for the Company's securities. A Consultant must be a person to whom the issuance of Shares registered on Form S-8 under the Securities Act is permitted.

(m) "Director" means a member of the Board.

(n) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that in the case of Awards other than Incentive Stock Options, the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

(o) “Employee” means any person, including Officers and Directors, providing services as an employee to the Company or any member of the Company Group. However, with respect to Incentive Stock Options, an Employee must be employed by the Company or any Parent or Subsidiary of the Company (such as an Employee, an “ISO Employee”). Notwithstanding, Options awarded to individuals not providing services to the Company or a Subsidiary of the Company should be carefully structured to comply with the payment timing rule of Code Section 409A. Neither service as a Director nor payment of a director’s fee by the Company will constitute “employment” by the Company.

(p) “Exchange Act” means the U.S. Securities Exchange Act of 1934.

(q) “Exchange Program” means a program under which (i) outstanding Awards are surrendered or cancelled in exchange for awards of the same type (which may have higher or lower Exercise Prices and different terms), awards of a different type, and/or cash, (ii) Participants would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the Exercise Price of an outstanding Award is increased or reduced. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

(r) “Exercise Price” means the price payable per share to exercise an Award.

(s) “Expiration Date” means the last possible day on which an Option or Stock Appreciation Right may be exercised. Any exercise must be completed before midnight U.S. Eastern Time between the Expiration Date and the following date; provided, however, that any broker-assisted cashless exercise of an Option granted hereunder must be completed by the close of market trading on the Expiration Date.

(t) “Fair Market Value” means, as of any date, the value of a Share, determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the New York Stock Exchange, the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market of The NASDAQ Stock Market, the Fair Market Value will be the closing sales price for a Share (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported by such source as the Administrator determines to be reliable. If the determination date for the Fair Market Value occurs on a non-Trading Day (i.e., a weekend or holiday), the Fair Market Value will be such price on the immediately preceding Trading Day, unless otherwise determined by the Administrator;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share will be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on that date on the last Trading Day such bids and asks were reported), as reported by such source as the Administrator determines to be reliable;

(iii) Absent an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

Notwithstanding the foregoing, if the determination date for the Fair Market Value occurs on a weekend, holiday or other day other than a Trading Day, the Fair Market Value will be the price as determined under subsections (t)(i) or (t)(ii) above on the immediately preceding Trading Day, unless otherwise determined by the Administrator. In addition, for purposes of determining the fair market value of shares for any reason other than the determination of the Exercise Price of Options or Stock Appreciation Rights, fair market value will be determined by the Administrator in a manner compliant with Applicable Laws and applied consistently for such purpose. Note that the determination of fair market value for purposes of tax withholding may be made in the Administrator’s sole discretion subject to Applicable Laws and is not required to be consistent with the determination of Fair Market Value for other purposes.

(u) “Fiscal Year” means a fiscal year of the Company.

(v) "Grant Date" means Grant Date as defined in Section 4(c).

(w) "Incentive Stock Option" means an Option that is intended to qualify and does qualify as an incentive stock option within the meaning of Code Section 422.

(x) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(y) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(z) "Option" means a right to acquire Shares granted under Section 6.

(aa) "Outside Director" means a Director who is not an Employee.

(bb) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Code Section 424(e).

(cc) "Participant" means the holder of an outstanding Award.

(dd) "Performance Awards" means an Award which may be earned in whole or in part upon attainment of performance goals or other vesting criteria as the Administrator may determine and which may be cash- or stock-denominated and may be settled for cash, Shares or other securities or a combination of the foregoing under Section 10.

(ee) "Performance Period" means Performance Period as defined in Section 10(a)

(ff) "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock is subject to restrictions and therefore, the Shares are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of target levels of performance, or the occurrence of other events as determined by the Administrator.

(gg) "Plan" means this 2023 Incentive Equity Plan.

(hh) "Restricted Stock" means Shares issued under an Award granted under Section 8 or issued as a result of the early exercise of an Option.

(ii) "Restricted Stock Unit" means a bookkeeping entry representing an amount equal to the Fair Market Value, granted under Section 9. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

(jj) "Securities Act" means U.S. Securities Act of 1933.

(kk) "Service Provider" means an Employee, Director or Consultant.

(ll) "Share" means a share of the Common Stock as adjusted in accordance with Section 13 of the Plan.

(mm) "Stock Appreciation Right" means an Award granted under Section 7.

(nn) "Subsidiary" means a "subsidiary corporation" as defined in Code Section 424(f), in relation to the Company.

(oo) "Tax Withholdings" means tax, social insurance and social security liability or premium obligations in connection with the Awards, including, without limitation, (i) all federal, state, and local income, employment and any other taxes (including the Participant's U.S. Federal Insurance Contributions Act (FICA) obligation) that are required to be withheld by the Company or a member of the Company Group, (ii) the Participant's and, to the extent required by the Company, the fringe benefit tax liability of the Company or a member of the Company Group, if any, associated with the grant, vesting, or exercise of an Award or sale of Shares issued under the Award, and (iii) any other taxes or social insurance or social security liabilities or premium the responsibility for which the Participant has, or has agreed to bear, with respect to such Award, the Shares subject to, or other amounts or property payable under, an Award, or otherwise associated with or related to participation in the Plan and with respect to which the Company or the applicable member of the Company Group has either agreed to withhold or has an obligation to withhold.

(pp) "Ten Percent Owner" means Ten Percent Owner as defined in Section 6(b)(i).

(qq) "Trading Day" means a day on which the primary stock exchange or national market system (or other trading platform, as applicable) on which the Common Stock trades is open for trading.

(rr) "Transaction" means Transaction as defined in Section 14(a).

3. Shares Subject to the Plan.

(a) Allocation of Shares to Plan. The maximum aggregate number of Shares that may be issued under the Plan is:

(i) 5,300,000 Shares, plus

(ii) any additional Shares that become available for issuance under the Plan under Sections 3(b) and 3(c), minus

(iii) with respect to any Retention Class B-1 Unit Awards, any such Shares (1) into which the Retention Class B-1 Unit Awards have been exchanged as part of the Company Class B-1 Unit Award Exchange Offer or (2) that have been issued or are issuable in respect of any Company Common Units into which such Retention Class B-1 Unit Awards were reclassified upon the adoption of the Amended and Restated Company LLC Agreement.

The Shares may be authorized but unissued Common Stock or Common Stock issued and then reacquired by the Company.

(b) Automatic Share Reserve Increase. The number of Shares available for issuance under the Plan will be increased on the first day of each Fiscal Year beginning with the 2023 Fiscal Year, in an amount equal to the lesser of:

(i) 5% of the total number of shares of all classes of common stock of the Company outstanding on the last day of the immediately preceding Fiscal Year, and

(ii) a lesser number of Shares determined by the Administrator, provided, however, that the maximum number of additional Shares available for issuance pursuant to this Section 3(b) shall be 30,000,000.

(c) Share Reserve Return.

(i) Options and Stock Appreciation Rights. If an Option or Stock Appreciation Right expires or becomes unexercisable without having been exercised in full or is surrendered under an Exchange Program, the unissued Shares subject to the Option or Stock Appreciation Right will become available for future issuance under the Plan.

(ii) Stock Appreciation Rights. Only Shares actually issued pursuant to a Stock Appreciation Right (i.e., the net Shares issued) will cease to be available under the Plan; all remaining Shares originally subject to the Stock Appreciation Right will remain available for future issuance under the Plan.

(iii) Full-Value Awards. Shares issued pursuant to Awards of Restricted Stock, Restricted Stock Units, or stock-settled Performance Awards that are reacquired by the Company due to failure to vest or are forfeited to the Company will become available for future issuance under the Plan.

(iv) Withheld Shares. Shares used to pay the Exercise Price of an Award or to satisfy Tax Withholdings related to an Award will become available for future issuance under the Plan.

(v) Cash-Settled Awards. If any portion of an Award under the Plan is paid to a Participant in cash rather than Shares, that cash payment will not reduce the number of Shares available for issuance under the Plan.

(d) Incentive Stock Options. The maximum number of Shares that may be issued upon the exercise of Incentive Stock Options will equal to 300% of the aggregate Share number stated in Section 3(a) plus, to the extent allowable under Code Section 422, any Shares that become available for issuance under the Plan under Sections 3(b) and 3(c).

(e) Adjustment. The numbers provided in Sections 3(a), 3(b), and 3(d) will be adjusted as a result of changes in capitalization and any other adjustments under Section 13.

(f) Substitute Awards. If the Committee grants Awards in substitution for equity compensation awards outstanding under a plan maintained by an entity acquired by or becomes a part of any member of the Company Group, the grant of those substitute Awards will not decrease the number of Shares available for issuance under the Plan.

(g) Share Reserve. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as will be sufficient to satisfy the requirements of the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) The Plan will be administered by the Board or a Committee (the "Administrator"). Different Administrators may administer the Plan with respect to different groups of Service Providers. The Board may retain the authority to concurrently administer the Plan with a Committee and may revoke the delegation of some or all authority previously delegated.

(ii) To the extent permitted by Applicable Laws, the Board or a Committee may delegate to one or more subcommittees of the Board or a Committee or officers the authority to grant Awards to Employees of the Company or any of its Subsidiaries, provided that the delegation must comply with any limitations on the authority required by Applicable Laws, including the total number of Shares that may be subject to the Awards granted by such officer(s). This delegation may be revoked at any time by the Board or Committee.

(b) Powers of the Administrator. Subject to the terms of the Plan, any limitations on delegations specified by the Board, and any requirements imposed by Applicable Laws, the Administrator will have the authority, in its sole discretion, to make any determinations and perform any actions deemed necessary or advisable to administer the Plan including:

(i) to determine the Fair Market Value;

(ii) to approve forms of Award Agreements for use under the Plan;

(iii) to select the Service Providers to whom Awards may be granted and grant Awards to such Service Providers;

(iv) to determine the number of Shares to be covered by each Award granted;

(v) to determine the terms and conditions, consistent with the Plan, of any Award granted. Such terms and conditions may include, but are not limited to, the Exercise Price, the time(s) when Awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Award or the Shares relating to an Award;

(vi) to institute and determine the terms and conditions of an Exchange Program;

(vii) to construe interpret the Plan and make any decisions necessary to administer the Plan, including but not limited to determining whether and when a Change in Control has occurred;

(viii) to establish, amend and rescind rules and regulations and adopt sub-plans relating to the Plan, including rules, regulations and sub-plans for the purposes of facilitating compliance with applicable non-U.S. laws, easing the administration of the Plan and/or obtaining tax-favorable treatment for Awards granted to Service Providers located outside the U.S., in each case as the Administrator may deem necessary or advisable;

(ix) to interpret, modify or amend each Award (subject to Section 19), including extending the Expiration Date and the post-termination exercisability period of such modified or amended Awards;

(x) to allow Participants to satisfy tax withholding obligations in any manner permitted by Section 16;

(xi) to delegate ministerial duties to any of the Company's Employees;

(xii) to authorize any person to take any steps and execute, on behalf of the Company, any documents required for an Award previously granted by the Administrator to be effective;

(xiii) to temporarily suspend the exercisability of an Award if the Administrator deems such suspension to be necessary or appropriate for administrative purposes, provided that, unless prohibited by Applicable Laws, such suspension shall be lifted in all cases not less than 10 Trading Days before the last date that the Award may be exercised;

(xiv) to allow Participants to defer the receipt of the payment of cash or the delivery of Shares otherwise due to any such Participants under an Award; and

(xv) to make any determinations necessary or appropriate under Section 13

(c) Grant Date. The grant date of an Award (“Grant Date”) will be the date that the Administrator makes the determination granting such Award or may be a later date if such later date is designated by the Administrator on the date of the determination or under an automatic grant policy. Notice of the determination will be provided to each Participant within a reasonable time after the Grant Date.

(d) Waiver. The Administrator may waive any terms, conditions or restrictions.

(e) Fractional Shares. Except as otherwise provided by the Administrator, any fractional Shares that result from the adjustment of Awards will be canceled. Any fractional Shares that result from vesting percentages will be accumulated and vested on the date that an accumulated full Share is vested.

(f) Electronic Delivery. The Company may deliver by e-mail or other electronic means (including posting on a website maintained by the Company or by a third party under contract with the Company or another member of the Company Group) all documents relating to the Plan or any Award and all other documents that the Company is required to deliver to its security holders (including prospectuses, annual reports and proxy statements).

(g) Choice of Law; Choice of Forum. The Plan, all Awards and all determinations made and actions taken under the Plan, to the extent not otherwise governed by the laws of the United States, will be governed by the laws of the State of Delaware without giving effect to principles of conflicts of law. For purposes of litigating any dispute that arises under this Plan, a Participant’s acceptance of an Award is his or her consent to the jurisdiction of the State of Delaware, and agreement that any such litigation will be conducted in Delaware Court of Chancery, or the federal courts for the United States for the District of Delaware, and no other courts, regardless of where a Participant’s services are performed.

(h) Effect of Administrator’s Decision. The Administrator’s decisions, determinations and interpretations will be final and binding on all Participants and any other holders of Awards.

5. Eligibility. Nonstatutory Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units and Performance Awards may be granted to Service Providers. Incentive Stock Options may be granted only to ISO Employees.

6. Stock Options.

(a) Stock Option Award Agreement. Each Option will be evidenced by an Award Agreement that will specify the number of Shares subject to the Option, per share Exercise Price, its Expiration Date, and such other terms and conditions as the Administrator determines. Each Option will be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. An Option not designated as an Incentive Stock Option is a Nonstatutory Stock Option.

(b) Exercise Price. The Exercise Price for the Shares to be issued upon exercise of an Option will be determined by the Administrator and stated in the Award Agreement, subject to the following:

(i) In the case of an Incentive Stock Option:

(1) granted to an ISO Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company (a “Ten Percent Owner”), the Exercise Price for the Shares to be issued will be no less than 110% of the Fair Market Value per Share on the date of grant; and

(2) granted to any ISO Employee other than a Ten Percent Owner, the Exercise Price for the Shares to be issued will be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the Exercise Price for the Shares to be issued will be no less than 100% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with an Exercise Price of less than 100% of the Fair Market Value per Share on the Grant Date (i) pursuant to a transaction described in, and in a manner consistent with, Section 424(a) of the Code or (ii) to a Service Provider that is not a U.S. taxpayer.

(c) Form of Consideration. The Administrator will determine the acceptable form(s) of consideration for exercising an Option. Unless the Administrator determines otherwise, the consideration may consist of any one or more or combination of the following, to the extent permitted by Applicable Laws:

(i) cash;

(ii) check or wire transfer;

(iii) promissory note, if and to the extent approved by the Company;

(iv) other Shares that have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Shares as to which such Option will be exercised. To the extent not prohibited by the Administrator, this shall include the ability to tender Shares to exercise the Option and then use the Shares received on exercise to exercise the Option with respect to additional Shares;

(v) consideration received by the Company under a cashless exercise arrangement (whether through a broker or otherwise) implemented by the Company for the exercise of Options that has been approved by the Administrator, if and to the extent permitted by the Company with respect to a particular Award;

(vi) consideration received by the Company under a net exercise program under which Shares are withheld from otherwise deliverable Shares that has been approved by the Administrator, if and to the extent permitted by the Company with respect to a particular Award; and

(vii) any other consideration or method of payment to issue Shares (provided that other forms of considerations may only be approved by the Administrator).

The Administrator has the power to remove or limit any of the above forms of consideration for exercising an Option, except for the payment of cash, at any time in its sole discretion.

(d) Term of Option. The term of each Option will be determined by the Administrator and stated in the Award Agreement, provided that, in the case of an Incentive Stock Option: (a) granted to a Ten Percent Owner, the Option may not be exercisable after the expiration of 5 years from the date such Option is granted, or such shorter term as may be provided in the Award Agreement; and (b) granted to an ISO Employee other than a Ten Percent Owner, the Option may not be exercisable after the expiration of 10 years from the date such Option is granted term, or such shorter term as may be provided in the Award Agreement.

(e) Incentive Stock Option Limitations.

(i) To the extent that the aggregate fair market value of the shares with respect to which incentive stock options under Code Section 422(b) are exercisable for the first time by a Participant during any calendar year (under all plans and agreements of the Company or any Parent or Subsidiary of the Company) exceeds \$100,000, the incentive stock options whose value exceeds \$100,000 will be treated as nonstatutory stock options. Incentive stock options will be considered in the order in which they were granted. For this purpose, the fair market value of the shares subject to an option will be determined as of the grant date of each option.

(ii) If an Option is designated in the Administrator action that granted it as an Incentive Stock Option but the terms of the Option do not comply with Sections 6(b) and 6(d), then the Option will not qualify as an Incentive Stock Option.

(f) Exercise of Option. An Option is exercised when the Company receives: (i) a notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Option and (ii) full payment for the Shares with respect to which the Option is exercised (together with applicable Tax Withholdings). Shares issued upon exercise of an Option will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to an Option, despite the exercise of the Option. The Company will issue (or cause to be issued) such Shares promptly after the Option is exercised. An Option may not be exercised for a fraction of a Share. Exercising an Option in any manner will decrease the number of Shares thereafter available, both for purposes of the Plan (except as provided in Section 3(c)) and for purchase under the Option, by the number of Shares as to which the Option is exercised.

(i) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon such cessation as the result of the Participant's death or Disability, the Participant may exercise his or her Option within 30 days of such cessation, or such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement or Section 6(d), as applicable) to the extent that the Option is vested on the date of cessation. Unless otherwise provided by the Administrator or set forth in the Award Agreement or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable, if on the date of such cessation the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan immediately. If after such cessation the Participant does not exercise his or her Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(ii) Disability of Participant. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option within 6 months of cessation, or such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement or Section 6(d), as applicable) to the extent the Option is vested on the date of cessation. Unless otherwise provided by the Administrator or set forth in the Award Agreement or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable, if on the date of cessation the Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan immediately. If after such cessation the Participant does not exercise his or her Option within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(iii) Death of Participant. If a Participant dies while a Service Provider, the Option may be exercised within 6 months following the Participant's death, or within such longer period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Option as set forth in the Award Agreement or Section 6(d), as applicable) to the extent that the Option is vested on the date of death, by the Participant's designated beneficiary, provided the Administrator has permitted the designation of a beneficiary and provided such beneficiary has been designated prior to the Participant's death in a form (if any) acceptable to the Administrator. If the Administrator has not permitted the designation of the beneficiary or if no such beneficiary has been designated by the Participant, then such Option may be exercised by the personal representative of the Participant's estate or by the person(s) to whom the Option is transferred pursuant to the Participant's will or in accordance with the laws of descent and distribution. If the Option is exercised pursuant to this Section 6(f)(iii), Participant's designated beneficiary or personal representative shall be subject to the terms of this Plan and the Award Agreement, including but not limited to the restrictions on transferability and forfeitability applicable to the Service Provider. Unless otherwise provided by the Administrator or set forth in the Award Agreement or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable, if at the time of death Participant is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option will revert to the Plan immediately. If the Option is not so exercised within the time specified herein, the Option will terminate, and the Shares covered by such Option will revert to the Plan.

(g) Expiration of Options. Subject to Section 6(d), an Option's Expiration Date will be set forth in the Award Agreement. An Option may expire before its expiration date under the Plan (including pursuant to Sections 6(f), 13, 14, or 17(d)) or under the Award Agreement.

(h) Tolling of Expiration. If exercising an Option prior to its expiration is not permitted because of Applicable Laws, other than the rules of any stock exchange or quotation system on which the Common Stock is listed or quoted, the Option will remain exercisable until 30 days after the first date on which exercise no longer would be prevented by such provisions; provided, however, that this tolling of expiration shall not apply if and to the extent the holder of such Option is a United States taxpayer and the tolling would result in a violation of Section 409A such that the Option would be subject to additional taxation or interest under Section 409A. If this would result in the Option remaining exercisable past its Expiration Date, then unless earlier terminated pursuant to Section 14, the Option will remain exercisable only until the end of the later of (x) the first day on which its exercise would not be prevented by Section 20(a) and (y) its Expiration Date.

7. Stock Appreciation Rights.

(a) **Stock Appreciation Right Award Agreement.** Each Stock Appreciation Right grant will be evidenced by an Award Agreement that will specify the number of Shares subject to the Stock Appreciation Right, its per share Exercise Price, its Expiration Date, and such other terms and conditions as the Administrator determines.

(b) **Exercise Price.** The Exercise Price of a Stock Appreciation Right will be determined by the Administrator, provided that in the case of a Stock Appreciation Right granted to a U.S. taxpayer, the Exercise Price will be no less than 100% of the Fair Market Value of a Share on the date of grant.

(c) **Payment of Stock Appreciation Right Amount.** Payment upon Stock Appreciation Right exercise may be made in cash, in Shares (which, on the date of exercise, have an aggregate fair market value equal to the amount of payment to be made under the Award), or any combination of cash and Shares, with the determination of form of payment made by the Administrator. When a Participant exercises a Stock Appreciation Right, he or she will be entitled to receive a payment from the Company equal to:

- (i) the excess, if any, between the fair market value on the date of exercise over the Exercise Price multiplied by
- (ii) the number of Shares with respect to which the Stock Appreciation Right is exercised.

(d) **Exercise of Stock Appreciation Right.** A Stock Appreciation Right is exercised when the Company receives a notice of exercise (in such form as the Administrator may specify from time to time) from the person entitled to exercise the Stock Appreciation Right. Shares issued upon exercise of a Stock Appreciation Right will be issued in the name of the Participant. Until the Shares are issued (as evidenced by the entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder will exist with respect to the Shares subject to a Stock Appreciation Right, despite the exercise of the Stock Appreciation Right. The Company will issue (or cause to be issued) such Shares promptly after the Stock Appreciation Right is exercised. A Stock Appreciation Right may not be exercised for a fraction of a Share. Exercising a Stock Appreciation Right in any manner will decrease (x) the number of Shares thereafter available under the Stock Appreciation Right by the number of Shares as to which the Stock Appreciation Right is exercised and (y) the number of Shares thereafter available under the Plan by the number of Shares issued upon such exercise.

(e) **Expiration of Stock Appreciation Rights.** A Stock Appreciation Right's Expiration Date will be set forth in the Award Agreement. A Stock Appreciation Right may expire before its expiration date under the Plan (including pursuant to Sections 13, 14, or 16(c)) or under the Award Agreement. Notwithstanding the foregoing, the rules of Section 6(d) relating to the maximum term and Section 6(f) relating to exercise also will apply to Stock Appreciation Rights.

(f) **Tolling of Expiration.** If exercising a Stock Appreciation Right prior to its expiration is not permitted because of Applicable Laws, other than the rules of any stock exchange or quotation system on which the Common Stock is listed or quoted, the Stock Appreciation Right will remain exercisable until 30 days after the first date on which exercise no longer would be prevented by such provisions; provided, however, that this tolling of expiration shall not apply if and to the extent the holder of such Stock Appreciation Right is a United States taxpayer and the tolling would result in a violation of Section 409A such that the Stock Appreciation Right would be subject to additional taxation or interest under Section 409A. If this would result in the Stock Appreciation Right remaining exercisable past its Expiration Date, then unless earlier terminated pursuant to Section 14, the Stock Appreciation Right will remain exercisable only until the end of the later of (x) the first day on which its exercise would not be prevented by Section 20(a) and (y) its Expiration Date.

8. Restricted Stock.

(a) **Restricted Stock Award Agreement.** Each Award of Restricted Stock will be evidenced by an Award Agreement that will specify the number of Shares subject to the Award of Restricted Stock and such other terms and conditions as the Administrator determines. For the avoidance of doubt, Restricted Stock may be granted without any Period of Restriction (e.g., fully vested stock bonuses). Unless the Administrator determines otherwise, Shares of Restricted Stock will be held in escrow while unvested.

(b) Restrictions.

(i) Except as provided in this Section 8(b) or the Award Agreement, while unvested, Shares of Restricted Stock may not be sold, transferred, pledged, assigned, or otherwise alienated.

(ii) While unvested, Service Providers holding Shares of Restricted Stock may exercise full voting rights with respect to those Shares, unless the Administrator determines otherwise.

(iii) Service Providers holding a Share covered by an Award of Restricted Stock will not be entitled to receive dividends and other distributions paid with respect to such Shares while such Shares are unvested, unless the Administrator provides otherwise. If the Administrator provides that dividends and distributions will be received and any such dividends or distributions are paid in cash they will be subject to the same provisions regarding forfeitability as the Shares with respect to which they were paid and if such dividend or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares with respect to which they were paid and, unless the Administrator determines otherwise, the Company will hold such dividends until the restrictions on the Shares with respect to which they were paid have lapsed.

(iv) Except as otherwise provided in this Section 8(b) or an Award Agreement, a Share covered by each Award of Restricted Stock made under the Plan will be released from escrow when practicable after the last day of the applicable Period of Restriction.

(v) The Administrator may impose (prior to grant) or remove (at any time) any restrictions on Shares covered by an Award of Restricted Stock.

9. Restricted Stock Units.

(a) Restricted Stock Unit Award Agreement. Each Award of Restricted Stock Units will be evidenced by an Award Agreement that will specify the number of Restricted Stock Units subject to the Award of Restricted Stock Units and such other terms and conditions as the Administrator determines.

(b) Vesting Criteria and Other Terms. The Administrator will set vesting criteria, if any, that, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units paid out to the Participant. The Administrator may set vesting criteria based upon the achievement of Company-wide, divisional, business unit, or individual goals (that may include continued employment or service) or any other basis determined by the Administrator in its sole discretion.

(c) Earning Restricted Stock Units. Upon meeting any applicable vesting criteria, the Participant will have earned the Restricted Stock Units and will be paid as determined in Section 9(d). The Administrator may reduce or waive any criteria that must be met to earn the Restricted Stock Units.

(d) Form and Timing of Payment. Payment of earned Restricted Stock Units will be made at the time(s) set forth in the Award Agreement and determined by the Administrator. Unless otherwise provided in the Award Agreement, the Administrator may settle earned Restricted Stock Units in cash, Shares, or a combination of both.

10. Performance Awards.

(a) Award Agreement. Each Performance Award will be evidenced by an Award Agreement that will specify the specify any time period during which any performance objectives or other vesting provisions, if any, will be measured ("Performance Period"), and such other terms and conditions as the Administrator determines.

(b) Objectives or Vesting Provisions and Other Terms. The Administrator will set objectives or vesting provisions that, depending on the extent to which the objectives or vesting provisions are met, will determine the value of the payout for the Performance Awards. The Administrator may set vesting criteria based upon the achievement of Company-wide, divisional, business unit, or individual goals (that may include continued employment or service) or any other basis determined by the Administrator in its sole discretion.

(c) Form and Timing of Payment. Payment of earned Performance Awards will be made at the time(s) specified in the Award Agreement. Payment with respect to earned Performance Awards will be made in cash, in Shares of equivalent value, or any combination of cash and Shares, with the determination of form of payment made by the Administrator at the time of payment or, in the discretion of the Administrator, at the time of grant.

(d) Value of Performance Awards. Each Performance Award's threshold, target, and maximum payout values will be established by the Administrator on or before the Grant Date.

(e) Earning Performance Awards. After an applicable Performance Period has ended, the holder of a Performance Award will be entitled to receive a payout for the Performance Award earned by the Participant over the Performance Period. The Administrator may reduce or waive any performance objectives or other vesting provisions for such Performance Award.

11. Leaves of Absence/ Reduced or Part-time Work Schedule/Transfer Between Locations/Change of Status.

(a) Leaves of Absence/ Reduced or Part-time Work Schedule/Transfer Between Locations. Unless the Administrator provides otherwise or as otherwise required by Applicable Laws, vesting of Awards granted hereunder will be adjusted or suspended during any unpaid leave of absence in accordance with the Company's leave of absence policy in effect at the time of such leave. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or within the Company Group. In addition, unless the Administrator provides otherwise or as otherwise required by Applicable Laws, if, after the date of grant of a Participant's Award, the Participant commences working on a part-time or reduced work schedule basis, the vesting of such Award will be adjusted in accordance with the Company's reduced work schedule/ part-time policy then in effect. Adjustments or suspensions of vesting pursuant to this Section shall be accomplished in a manner that is exempt from or complies with the requirements of Code Section 409A and the regulations and guidance thereunder.

(b) Employment Status. A Participant will not cease to be a Service Provider in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company (or member of the Company Group) or between the Company or any member of the Company Group.

(c) Incentive Stock Options. With respect to Incentive Stock Options, no such leave may exceed 3 months, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then 6 months following the first day of such leave any Incentive Stock Option held by a Participant will cease to be treated as an Incentive Stock Option and will be treated for tax purposes as a Nonstatutory Stock Option.

12. Transferability of Awards. Unless determined otherwise by the Administrator, or otherwise required by Applicable Laws, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant. If the Administrator makes an Award transferable, the Award will be limited by any additional terms and conditions imposed by the Administrator. Any unauthorized transfer of an Award will be void.

13. Adjustments; Dissolution or Liquidation.

(a) Adjustments. If any extraordinary dividend or other extraordinary distribution (whether in cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, reclassification, repurchase, or exchange of Shares or other securities of the Company, other change in the corporate structure of the Company affecting the Shares, or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any of its successors) affecting the Shares occurs (including a Change in Control), the Administrator, to prevent diminution or enlargement of the benefits or potential benefits intended to be provided under the Plan, will adjust the number and class of shares that may be delivered under the Plan and/or the number, class, and price of shares covered by each outstanding Award, and the numerical Share limits in Section 3. Notwithstanding the foregoing, the conversion of any convertible securities of the Company and ordinary course repurchases of Shares or other securities of the Company will not be treated as an event that will require adjustment.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant, at such time prior to the effective date of such proposed transaction as the Administrator determines. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action.

14. Change in Control or Merger.

(a) **Administrator Discretion.** If a Change in Control or a merger of the Company with or into another entity occurs (each, a “Transaction”), each outstanding Award will be treated as the Administrator determines (subject to the provisions of this Section), without a Participant’s consent, including that such Award be continued by the successor corporation or a Parent or Subsidiary of the successor corporation (or an affiliate thereof) or that the vesting of any such Awards may accelerate automatically upon consummation of a Transaction.

(b) **Identical Treatment Not Required.** The Administrator need not take the same action or actions with respect to all Awards or portions thereof or with respect to all Participants. The Administrator may take different actions with respect to the vested and unvested portions of an Award. The Administrator will not be required to treat all Awards similarly in the Transaction.

(c) **Continuation.** An Award will be considered continued if, following the Change in Control or merger:

(i) the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Transaction, the consideration (whether stock, cash, or other securities or property) received in the Transaction by holders of Shares for each Share held on the Closing Date (and if holders were offered a choice of consideration, the type of consideration received by the holders of a majority of the outstanding Shares) and the Award otherwise is continued in accordance with its terms (including vesting criteria), subject to Section 14(c)(iii) below and Section 13(a); provided that if the consideration received in the Transaction is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon exercising an Option or Stock Appreciation Right or upon the payout of a Restricted Stock Unit, or Performance Award, for each Share subject to such Award, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Transaction; or

(ii) the Award is terminated in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant’s rights as of the date of the occurrence of the Transaction. Any such cash or property may be subjected to any escrow applicable to holders of Common Stock in the Change in Control. If as of the date of the occurrence of the Transaction the Administrator determines that no amount would have been attained upon the exercise of such Award or realization of the Participant’s rights, then such Award may be terminated by the Company without payment. The amount of cash or property can be subjected to vesting and paid to the Participant over the original vesting schedule of the Award.

(iii) Notwithstanding anything in this Section 14(c) to the contrary, an Award that vests, is earned or paid-out upon the satisfaction of one or more performance goals will not be considered assumed if the Company or its successor modifies any of such performance goals without the Participant’s consent, in all cases, unless specifically provided otherwise under the applicable Award Agreement or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable; provided, however, a modification to such performance goals only to reflect the successor corporation’s post-Transaction corporate structure will not invalidate an otherwise valid Award assumption.

(d) **Modification.** The Administrator will have authority to modify Awards in connection with a Change in Control or merger:

(i) in a manner that causes the Awards to lose their tax-preferred status,

(ii) to terminate any right a Participant has to exercise an Option prior to vesting in the Shares subject to the Option (i.e., “early exercise”), so that following the closing of the Transaction the Option may only be exercised only to the extent it is vested;

(iii) to reduce the Exercise Price subject to the Award in a manner that is disproportionate to the increase in the number of Shares subject to the Award, as long as the amount that would be received upon exercise of the Award immediately before and immediately following the closing of the Transaction is equivalent and the adjustment complies with U.S. Treasury Regulation Section 1.409A-1(b)(v)(D); and

(iv) to suspend a Participant's right to exercise an Option during a limited period of time preceding and or following the closing of the Transaction without Participant consent if such suspension is administratively necessary or advisable to permit the closing of the Transaction.

(e) Non-Continuation. If the successor corporation does not continue an Award (or some portion such Award), the Administrator may provide that the Participant will fully vest in (and have the right to exercise) 100% of the then-unvested Shares subject to his or her outstanding Options and Stock Appreciation Rights, all restrictions on 100% of the Participant's outstanding Restricted Stock and Restricted Stock Units will lapse, and, regarding 100% of Participant's outstanding Awards with performance-based vesting, all performance goals or other vesting criteria will be treated as achieved at 100% of target levels and all other terms and conditions met, in all cases. In no event will vesting of an Award accelerate as to more than 100% of the Award. Unless specifically provided otherwise under the applicable Award Agreement or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable, if Options or Stock Appreciation Rights are not continued when a Change in Control or a merger of the Company with or into another corporation or other entity occurs, the Administrator will notify the Participant in writing or electronically that the Participant's vested Options or Stock Appreciation Rights (after considering the foregoing vesting acceleration, if any) will be exercisable for a period of time determined by the Administrator in its sole discretion and all of the Participant's Options or Stock Appreciation Rights will terminate upon the expiration of such period (whether vested or unvested).

15. Outside Director Grants.

(a) With respect to Awards granted to an Outside Director, in the event of a Change in Control, the Participant will fully vest in and have the right to exercise outstanding Options and/or Stock Appreciation Rights as to all of the Shares underlying such Award, including those Shares which otherwise would not be vested or exercisable, all restrictions on other outstanding Awards will lapse, and, with respect to Awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at 100% of target levels and all other terms and conditions met, unless specifically provided otherwise under the applicable Award Agreement, a Company policy related to Director compensation, or other written agreement authorized by the Administrator between the Participant and the Company or any of its Subsidiaries or Parents, as applicable, that specifically references this default rule.

(b) No Outside Director may be paid, issued or granted, in any Fiscal Year, cash retainer fees and equity awards (including any Awards issued under this Plan) with an aggregate value greater than \$750,000, increased to \$1,500,000 in connection with his or her initial service (with the value of each equity award based on its grant date fair value (determined in accordance with U.S. generally accepted accounting principles)). Any cash compensation paid or Awards granted to an individual for his or her services as an Employee, or for his or her services as a Consultant (other than as an Outside Director), will not count for purposes of the limitation under this Section 15(b).

16. Tax Matters.

(a) Withholding Requirements. Prior to the delivery of any Shares or cash under an Award (or exercise thereof) or such earlier time as any Tax Withholding are due, the Company may deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy any Tax Withholding with respect to such Award or Shares subject to an Award (including upon exercise of an Award).

(b) **Withholding Arrangements.** The Administrator, in its sole discretion and under such procedures as it may specify from time to time, may elect to satisfy such Tax Withholding, in whole or in part (including in combination) by (without limitation) (i) requiring the Participant to pay cash, check or other cash equivalents, (ii) withholding otherwise deliverable cash (including cash from the sale of Shares issued to the Participant) or Shares having a fair market value equal to the amount required to be withheld or such greater amount (including up to a maximum statutory amount) as the Administrator may determine or permit if such amount does not result in unfavorable financial accounting treatment, as the Administrator determines in its sole discretion, (iii) forcing the sale of Shares issued pursuant to an Award (or exercise thereof) having a fair market value equal to the minimum statutory amount applicable in a Participant's jurisdiction or any greater amount as the Administrator may determine or permit if such greater amount would not result in unfavorable financial accounting treatment, as the Administrator determines in its sole discretion, (iv) requiring the Participant to deliver to the Company already-owned Shares having a fair market value equal to the minimum statutory amount required to be withheld or any greater amount as the Administrator may determine or permit if such greater amount would not result in unfavorable financial accounting treatment, as the Administrator determines in its sole discretion, (v) requiring the Participant to engage in a cashless exercise transaction (whether through a broker or otherwise) implemented by the Company in connection with the Plan, (vi) having the Company or a Parent or Subsidiary withhold from wages or any other cash amount due or to become due to the Participant and payable by the Company or any Parent or Subsidiary, or (vii) such other consideration and method of payment for the meeting of Tax Withholding as the Administrator may determine to the extent permitted by Applicable Laws, provided that, in all instances, the satisfaction of the Tax Withholding will not result in any adverse accounting consequence to the Company, as the Administrator may determine in its sole discretion. The fair market value of the Shares to be withheld or delivered will be determined as of the date the amount of tax to be withheld is calculated or such other date as Administrator determines is applicable or appropriate with respect to the Tax Withholding calculation.

(c) **Compliance With Code Section 409A.** Unless the Administrator determines that compliance with Code Section 409A is not necessary, it is intended that Awards will be designed and operated so that they are either exempt or excepted from the application of Code Section 409A or comply with any requirements necessary to avoid the imposition of additional tax under Code Section 409A(a)(1)(B) so that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A and the Plan and each Award Agreement will be interpreted consistent with this intent. This Section 16(c) is not a guarantee to any Participant of the consequences of his or her Awards. In no event will the Company have any responsibility, liability or obligation to reimburse, indemnify or hold harmless Participant for any taxes that may be imposed or other costs that may be incurred, as a result of Section 409A.

17. Other Terms.

(a) **No Effect on Employment or Service.** Neither the Plan nor any Award will confer upon a Participant any right regarding continuing the Participant's relationship as a Service Provider with the Company or member of the Company Group, nor will they interfere with the Participant's right, or the Participant's employer's right, to terminate such relationship at any time free from any liability or claim under the Plan.

(b) **Interpretation and Rules of Construction.** The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation."

(c) **Plan Governs.** In the event of a conflict between the terms and conditions of the Plan and the terms and conditions of any Grant Agreement, the terms and conditions of the Plan will prevail.

(d) Forfeiture Events.

(i) All Awards granted under the Plan will be subject to recoupment under any clawback policy that the Company is required to adopt pursuant to the listing standards of any national the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Laws. In addition, the Administrator may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Administrator determines necessary or appropriate, including without limitation to any reacquisition right regarding previously acquired Shares or other cash or property. Unless this Section 17(d)(i) is specifically mentioned and waived in an Award Agreement or other document, no recovery of compensation under a clawback policy or otherwise will be an event that triggers or contributes to any right of a Participant to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or a member of the Company Group.

(ii) The Administrator may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award will be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but will not be limited to, termination of such Participant's status as Service Provider for cause or any specified action or inaction by a Participant that would constitute cause for termination of such Participant's status as a Service Provider.

18. **Term of Plan.** Subject to Section 21, the Plan will become effective upon the later to occur of (a) its adoption by the Board, (b) approval by the Company's stockholders, or (c) the Closing Date. The Plan will continue in effect until terminated under Section 19, but (i) no Incentive Stock Options may be granted after 10 years from the earlier of the Board or stockholder approval of the Plan and (ii) Section 3(b) relating to automatic share reserve increase will operate only until the tenth anniversary of the earlier of the Board or stockholder approval of the Plan.

19. **Amendment and Termination of the Plan.**

(a) **Amendment and Termination.** The Administrator, in its sole discretion, may amend, alter, suspend or terminate the Plan or any part thereof, at any time and for any reason.

(b) **Stockholder Approval.** The Company will obtain stockholder approval of any Plan amendment to the extent necessary or desirable to comply with Applicable Laws.

(c) **Consent of Participants Generally Required.** Subject to Section 19(d) below, no amendment, alteration, suspension or termination of the Plan or an Award under it will materially impair the rights of any Participant without a signed, written agreement authorized by the Administrator between the Participant and the Company. Termination of the Plan will not affect the Administrator's ability to exercise the powers granted to it regarding Awards granted under the Plan prior to such termination.

(d) **Exceptions to Consent Requirement.**

(i) A Participant's rights will not be deemed to have been materially impaired by any amendment, alteration, suspension or termination if the Administrator, in its sole discretion, determines that the amendment, alteration, suspension or termination taken as a whole, does not materially impair the Participant's rights; and

(ii) Subject to any limitations of Applicable Laws, the Administrator may amend the terms of any one or more Awards without the affected Participant's consent even if it does materially impair the Participant's right if such amendment is done

(ii) in a manner specified by the Plan,

(iii) to maintain the qualified status of the Award as an Incentive Stock Option under Code Section 422,

(iv) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award only because it impairs the qualified status of the Award as an Incentive Stock Option under Code Section 422,

(v) to clarify the manner of exemption from Code Section 409A or compliance with any requirements necessary to avoid the imposition of additional tax or interest under Code Section 409A(a)(1)(B), or

(vi) to comply with other Applicable Laws.

20. **Conditions Upon Issuance of Shares.**

(a) **Legal Compliance.** The Company will make good faith efforts to comply with all Applicable Laws related to the issuance of Shares. Shares will not be issued pursuant to an Award, including without limitation upon exercise or vesting thereof, as applicable, unless the issuance and delivery of such Shares and exercise or vesting of the Award, as applicable, will comply with Applicable Laws. If required by the Administrator, issuance will be further subject to the approval of counsel for the Company with respect to such compliance. If the Company determines it to be impossible or impractical to obtain authority from any regulatory body having jurisdiction or to complete or comply with the requirements of any Applicable Laws, registration or other qualification of the Shares under any state, federal or foreign law or under the rules and regulations of the U.S. Securities and Exchange Commission, the stock exchange on which Shares of the same class are then listed, or any other governmental or regulatory body, which authority, registration, qualification or rule compliance is deemed by the Company's counsel to be necessary or advisable for the issuance and sale of any Shares hereunder, the Company will be relieved of any liability regarding the failure to issue or sell such Shares as to which such authority, registration, qualification or rule compliance was not obtained and the Administrator reserves the authority, without the consent of a Participant, to terminate or cancel Awards with or without consideration in such a situation.

(b) Investment Representations. As a condition to the exercise or vesting of an Award, the Company may require the person exercising such Award to represent and warrant during any such exercise or vesting that the Shares are being purchased only for investment and with no present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

(c) Failure to Accept Award. If a Participant has not accepted an Award to the extent such acceptance has been requested or required by the Company or has not taken all administrative and other steps (e.g., setting up an account with a broker designated by the Company) necessary for the Company to issue Shares upon the vesting, exercise, or settlement of the Award prior to the date that a portion of the Award is scheduled to vest, then the portion of the Award scheduled to vest on such date will be cancelled on such date and the Shares subject to the Award covered by such portion immediately will revert to the Plan for no additional consideration unless otherwise provided by the Administrator.

21. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within 12 months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

September 26, 2023

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Commissioners:

We have read the statements made by American Oncology Network, Inc. (formerly Digital Transformation Opportunities Corp.) under Item 4.01 of its Form 8-K dated September 20, 2023. We agree with the statements concerning our Firm in such Form 8-K; we are not in a position to agree or disagree with other statements contained therein.

Very truly yours,

/s/ Marcum LLP

Marcum LLP
Houston, Texas

Subsidiaries of the Registrant

| Name of Subsidiary | Jurisdiction of Incorporation or Organization |
|--|--|
| American Oncology Network, LLC | Delaware |
| American Oncology Management Company, LLC | Delaware |
| American Oncology Partners, P.A. | Florida |
| American Oncology Partners of Maryland, P.A. | Maryland |
| AON Receivables, LLC | Delaware |
| AON Receivables Maryland, LLC | Maryland |
| AON Central Services, LLC | Delaware |
| AON Pharmacy, LLC | Florida |

* Excludes subsidiaries which, if considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary for the year ended December 31, 2022.

American Oncology Network and Digital Transformation Opportunities Corp. Announce Completion of Business Combination

AON to Ring Nasdaq's Closing Bell on September 21, 2023, to Commemorate First Day of Trading

FORT MYERS, Fla. and LOS ANGELES – September 20, 2023 – American Oncology Network, LLC (“AON” or the “Company”), a rapidly growing network of community-based oncology practices, and Digital Transformation Opportunities Corp. (Nasdaq: DTOC) (“DTOC”), a special purpose acquisition company focused on the healthcare industry announced today the completion of their previously announced business combination (the “Business Combination”).

The combined company has been renamed American Oncology Network, Inc., and its common stock is expected to commence trading on the Nasdaq Stock Market LLC (“Nasdaq”) under the new ticker symbol “AONC” on September 21, 2023. The Business Combination was approved at a special meeting of DTOC’s stockholders on September 19, 2023.

In just five years since its inception in 2018, AON has grown to include over 1,500 employees and over 200 providers in more than 75 clinics serving over 450,000 patients nationwide. AON practices have access to fully integrated ancillary services such as a specialty pharmacy, lab and pathology, radiation therapy, and imaging. These services promote clinical coordination and seamless communication throughout all stages of the care process. AON practices deliver high-quality patient care by sharing resources and expertise across the network, providing access to leading clinical trials, staying at the forefront of clinical innovation, and advocating for their patients and the profession of community oncology.

The DTOC partnership and recent strategic investment from AEA Growth, a leading global investment firm, will help further AON’s goals of supporting community oncology practices and improving the patient experience by unlocking further growth through continuing to add new providers to the AON network, scaling ancillary services, introducing new service offerings, and expanding AON’s existing services to address the broader oncology market.

“Today is an important milestone for AON and celebrates our team’s hard work and dedication, which have been the keys to our growth and success,” said Todd Schonherz, Chief Executive Officer of AON. “AON is committed more than ever to expanding our reach and advancing cancer care in communities across the nation where too often patients experience accessibility barriers.”

“We are proud of our successful partnership with AON and look forward to seeing the company’s profound impact enable advanced treatment options, clinical research, and comprehensive care options nationwide,” said Kevin Nazemi, Chief Executive Officer of DTOC.

The combined company will continue to be led by AON’s Chief Executive Officer, Todd Schonherz; Chief Financial Officer, David Gould; and Chief Medical Officer, Dr. Stephen “Fred” Divers.

Paul Hastings LLP served as legal advisor to DTOC. Woolery & Co. PLLC and Dentons US LLP served as legal advisors to AON.

About American Oncology Network

The American Oncology Network (AON) (Nasdaq: AONC) is an alliance of physicians and seasoned healthcare leaders partnering to ensure the long-term success of community oncology and other specialties. Launched in 2018, the rapidly expanding AON network represents 109 physicians and 86 nurse practitioners and physician assistants practicing across 19 states. The executive management team of AON encompasses more than four decades of oncology practice management experience, enabling physicians to focus on what matters most — providing the highest quality care for patients. Learn more at www.aoncology.com.

About DTOC

Digital Transformation Opportunities Corp. is a blank check company, led by Kevin Nazemi, Co-Founder and former Co-CEO of Oscar Health, formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more businesses. DTOC's Board of Directors includes Kevin Nazemi, Brad Fluegel (former Chief Strategy Officer of Walgreens and Anthem), Jim Moffatt (former Vice Chairman and Global CEO of Deloitte Consulting), and Heather Zynczak (former Chief Marketing Officer of Pluralsight and Domo). DTOC is focused on businesses operating in the healthcare industry. To learn more about Digital Transformation Opportunities Corp., visit www.dtocorp.com.

About AEA Growth

AEA Growth provides technology-enabled, healthcare and software companies with flexible capital and operational resources to accelerate growth. AEA Growth targets investments in category-leading, capital-efficient businesses with strong customer advocacy.

AEA Growth is part of AEA Investors LP. AEA Investors was founded in 1968 by the Rockefeller, Mellon and Harriman family interests and S.G. Warburg & Co. as a private investment vehicle for a select group of industrial family offices with substantial assets. AEA has an extraordinary global network built over many years which includes leading industrial families, business executives and leaders; many of whom invest with AEA as active individual investors and/or join its portfolio company boards or act in other advisory roles. Today, AEA's approximately 120 investment professionals operate globally with offices in New York, Stamford, San Francisco, London, Munich and Shanghai. The firm manages funds that have approximately \$19 billion of invested and committed capital including the leveraged buyouts of middle market companies and small business companies, growth capital and private investments.

For more information, please contact:

For AON:
David Gould, Chief Financial Officer
David.Gould@aoncology.com

For DTOC:
Kyle Francis, Chief Financial Officer
kyle@dtocorp.com

Forward-Looking Statements

Certain statements in this press release are forward-looking statements. Forward-looking statements generally relate to future events including future financial or operating performance of American Oncology Network, Inc. (“New AON”). Forward-looking statements generally relate to future events or New AON’s future financial or operating performance. For example, projections of future revenue and other metrics are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “may”, “should”, “expect”, “intend”, “will”, “estimate”, “anticipate”, “believe”, “predict”, “potential” or “continue”, or the negatives of these terms or variations of them or similar terminology. Such forward-looking statements are subject to risks, uncertainties, and other factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements.

These forward-looking statements are based upon estimates and assumptions that, while considered reasonable by New AON and its management, are inherently uncertain and are inherently subject to risks, variability and contingencies, many of which are beyond New AON’s control. Factors that may cause actual results to differ materially from current expectations include, but are not limited to: (1) the ability to recognize the anticipated benefits of the Business Combination, which may be affected by, among other things, competition, the ability of the combined company to grow and manage growth profitably, maintain key relationships and retain its management and key employees; (2) costs related to the Business Combination; (3) changes in applicable laws or regulations; (4) the possibility that New AON may be adversely affected by other economic, business, and/or competitive factors; (5) New AON’s estimates of expenses and profitability; and (6) other risks and uncertainties set forth in the section entitled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements” in New AON’s final prospectus relating to the Business Combination dated July 18, 2023 filed with the SEC, and in subsequent filings with the SEC. New AON cautions that the foregoing list of factors is not exclusive or exhaustive and investors should not place undue reliance upon any forward-looking statements, including projections, which speak only as of the date made. If any of these risks materialize or New AON’s assumptions prove incorrect, actual results could differ materially from the results implied by these forward-looking statements. There may be additional risks that New AON does not presently know or that New AON currently believes are immaterial that could also cause actual results to differ from those contained in the forward-looking statements. In addition, forward-looking statements reflect New AON’s expectations, plans or forecasts of future events and views as of the date of this communication. New AON anticipates that subsequent events and developments will cause New AON’s assessments to change. However, while New AON may elect to update these forward-looking statements at some point in the future, New AON specifically disclaims any obligation to do so, unless required by applicable law. These forward-looking statements should not be relied upon as representing New AON’s assessments as of any date subsequent to the date of this communication. New AON does not give any assurance that New AON will achieve its expectations. Accordingly, undue reliance should not be placed upon the forward-looking statements.

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Introduction

Digital Transformation Opportunities Corp., a Delaware corporation (“DTC”) and American Oncology Network, LLC, a Delaware limited liability company (the “Company” or “AON”) are providing the following unaudited pro forma condensed combined financial information to aid you in your analysis of the financial aspects of the Business Combination, as defined within this Form 8-K. The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X and should be read in conjunction with the accompanying notes.

The following unaudited pro forma condensed combined balance sheet as of June 30, 2023, combines the unaudited balance sheet of DTC as of June 30, 2023, with the unaudited consolidated balance sheet of the Company as of June 30, 2023, giving effect to the Business Combination as if it had been consummated on June 30, 2023.

The unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2023, combines the unaudited statement of operations of DTC for the six months ended June 30, 2023, with the unaudited consolidated statement of operations of the Company for the six months ended June 30, 2023. The unaudited pro forma condensed combined statement of operations for the year ended December 31, 2022, combines the audited statement of operations of DTC for the year ended December 31, 2022, with the audited consolidated statement of operations of the Company for the year ended December 31, 2022. The unaudited pro forma condensed combined statements of operations give effect to the Business Combination as if it had been consummated on January 1, 2022, the beginning of the earliest period presented.

The unaudited pro forma condensed combined financial information was derived from, and should be read in conjunction with, the following historical financial statements and the accompanying notes:

- The historical unaudited condensed financial statements of DTC as of and for the six months ended June 30, 2023, and the historical audited financial statements of DTC as of and for the year ended December 31, 2022; and
- The historical unaudited condensed consolidated financial statements of the Company as of and for the six months ended June 30, 2023, and the historical audited consolidated financial statements of the Company as of and for the year ended December 31, 2022.

The foregoing historical financial statements have been prepared in accordance with GAAP. The unaudited pro forma condensed combined financial information has been prepared based on the aforementioned historical financial statements and the assumptions and adjustments as described in the notes to the unaudited pro forma condensed combined financial information. The pro forma adjustments reflect transaction accounting adjustments related to the Business Combination, which is discussed in further detail below. The unaudited pro forma condensed combined financial statements are presented for illustrative purposes only and do not purport to represent DTC’s consolidated results of operations or consolidated financial position that would actually have occurred had the Business Combination been consummated on the dates assumed or to project DTC’s consolidated results of operations or consolidated financial position for any future date or period.

The unaudited pro forma condensed combined financial information should also be read together with “AON Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and other financial information included elsewhere in this Form 8-K.

Description of the Business Combination

As previously disclosed, Digital Transformation Opportunities Corp., American Oncology Network, LLC, GEF AON Holdings Corp. (“AON Class C Preferred Investor”), and DTC Merger Sub, Inc., a direct, wholly owned subsidiary of DTC (“Merger Sub”) entered into a Business Combination Agreement (the “Business Combination Agreement”), dated as of June 14, 2023 (which further amended and restated the Business Combination Agreement entered into by DTC and AON as of October 5, 2022, and amended and restated on January 6, 2023, and April 27, 2023), pursuant to which, among other transactions, on September 20, 2023 (the “Closing Date”), DTC and AON undertook a series of transactions (the “Business Combination”) resulting in the organization of the combined post-business combination company as an umbrella partnership C corporation, in which substantially all of the assets and the business of the combined company are held by AON, and DTC became a member of AON. In connection with the closing of the Business Combination, DTC changed its name to “American Oncology Network, Inc.” (sometimes referred to herein as “New AON”).

On September 19, 2023, DTOC held a special meeting of its stockholders (the “Special Meeting”) in connection with the Business Combination. At the Special Meeting, DTOC stockholders voted to approve the Business Combination with AON and related proposals. Prior to the Special Meeting, a total of 1,699,558 shares of common stock, par value \$0.0001, of DTOC (“DTOC Common Stock”) were presented for redemption for cash at a price of approximately \$10.50 per share in connection with the Special Meeting.

As a result of, and in connection with, the Closing, among other things, (i) AON amended and restated its operating agreement (the “Amended and Restated AON LLC Agreement”) to reclassify its existing Class A units, Class A-1 units and Class B units into a single class of AON common units that were exchanged on a one-to-one basis for shares of New AON Class A common stock (“New AON Class A Common Stock”) and its existing AON Class C units into AON Series A preferred units; (ii) AON converted profit pool units of certain of AON’s subsidiaries into an equal number of AON common units and shares of New AON Class B common stock (“New AON Class B Common Stock”), which together are exchangeable into shares of New AON Class A Common Stock (together with the New AON Class B Common Stock, the “New AON Common Stock”); (iii) New AON amended and restated its charter (the “Charter”) to provide for (a) the conversion of all existing shares of DTOC Class B common stock into shares of New AON Class A Common Stock on a one-to-one basis, (b) amendment of the terms of New AON Class B Common Stock to provide holders voting rights but no economic rights and (c) designation of a new series of New AON preferred stock as Series A convertible preferred stock (the “New AON Series A Preferred Stock”) with such rights and preferences as provided for in the certificate of designation of the New Aon Series A Preferred Stock (the “New AON Series A Certificate of Designation”); and (iv) among other things, (a) AON issued common units to New AON in exchange for a combination of cash and shares of New AON Class B Common Stock and warrants to acquire shares of New AON Class B Common Stock (the “Class B Prefunded Warrants”), (b) New AON was admitted as a member of AON, (c) AON distributed shares of New AON Class B common stock or Class B Prefunded Warrants, as applicable, to AON equityholders, (d) New AON reserved a specified number of additional shares of New AON Class A Common Stock after the Closing for issuance to eligible participants, (e) Merger Sub merged with and into the AON Class C Preferred Investor whereby the separate existence of Merger Sub ceased and New AON issued a number of shares of New AON Series A Preferred Stock equal to the number of AON Series A preferred units held by the AON Class C Preferred Investor to AEA Growth Management LP, the parent of AON Class C Preferred Investor (“AEA Growth”) in exchange for all the shares of common stock held by AEA Growth in the AON Class C Preferred Investor (the “First Step”), (f) promptly after the First Step, the AON Class C Preferred Investor merged with and into New AON whereby the separate existence of the AON Class C Preferred Investor ceased and New AON held all the AON Series A preferred units and (g) from and after the Closing (but subject to lock-up restrictions), the AON common equityholders (other than New AON) will have the right (but not the obligation) to exchange AON common units together with an equal number of shares of New AON Class B Common Stock (whether held directly or indirectly through Class B Prefunded Warrants) for shares of New AON Class A Common Stock.

In addition, in connection with the Closing of the Business Combination, DTOC completed the offer to the holders of AON Class B-1 units to exchange their AON Class B-1 units for such number of newly issued shares of New AON Class A Common Stock equal to the ratio set forth in the Business Combination Agreement (such offer, the “Exchange Offer”). DTOC and AON solicited consents from the holders of AON Class B-1 units to make certain amendments to the terms of the awards and the unit grant agreements pursuant to which the AON Class B-1 units were granted, which provided for the automatic exchange, as of immediately prior to the adoption of the Amended and Restated AON LLC Agreement, of all outstanding AON Class B-1 units into shares of New AON Class A Common Stock (collectively, the “Proposed Amendments”). The requisite number of holders of Class B-1 units provided their consent to the Proposed Amendments, and as a result, in connection with the closing of the Business Combination, all AON Class B-1 units were exchanged for an aggregate of 1,047,343 shares of New AON Class A Common Stock.

Accounting Treatment for the Business Combination

As the Company does not meet any of the characteristics of a VIE under ASC 810, the Transaction was evaluated under ASC 805, Business Combinations. Notwithstanding the legal form of the Business Combination pursuant to the Business Combination Agreement, the Business Combination will be accounted for as a reverse recapitalization in accordance with GAAP. Under this method of accounting, DTOC will

be treated as the acquired company and AON will be treated as the acquirer for financial statement reporting purposes. The Company has been determined to be the accounting acquirer based on, in summary, an evaluation of the following primary facts and circumstances:

- AON's directors will represent a majority of the board seats for New AON's board of directors;
- AON's senior management will be the senior management of the combined company;
- AON's operations comprising the ongoing operations of the post-combination company; and
- AON's relative size is significantly larger compared to DTOC.

Accordingly, for accounting purposes, the financial statements of the post-combination entity will represent a continuation of the financial statements of the Company with the acquisition being treated as the equivalent of the Company issuing stock for the net assets of DTOC, accompanied by a recapitalization. The net assets of DTOC will be stated at historical cost, with no goodwill or other intangible assets recorded.

Accounting for the Earnout Shares

Following the Closing and for five years thereafter, the Sponsor has agreed to subject 35% of the shares of New AON common stock held by it as of the Closing (the "Sponsor Earnout Shares") to the following vesting and forfeiture provisions:

- the Sponsor Earnout Shares will vest when the volume-weighted average price of the New AON Class A common stock equals or exceeds \$13.50 per share for any 20 trading days within any 30 trading day period beginning after the Closing and ending 60 months following the Closing;
- the Sponsor Earnout Shares will be released immediately upon the consummation of a change of control transaction within the 60-month period following the Closing; and
- if the Sponsor Earnout Shares are not released pursuant to the foregoing provisions on or before the date that is 60 months after the Closing, then the Sponsor Earnout Shares will be forfeited immediately following such date.

As the Business Combination will be accounted for as a reverse recapitalization, the issuance of the Sponsor Earnout Shares to the Company's existing shareholders will be accounted for as an equity transaction. The accounting for the Sponsor Earnout Shares was evaluated under ASC Topic 480, Distinguishing Liabilities from Equity, and ASC Subtopic 815-40, Derivatives and Hedging — Contracts in Entity's Own Equity, to determine if the Sponsor Earnout Shares should be classified as a liability or within equity. As part of that analysis, it was determined that the Sponsor Earnout Shares are

freestanding from the related shares of common stock, do not meet the criteria within ASC 480 to be classified as a liability, and meet the criteria in ASC 815-40 to be considered indexed to the post-combination

entity's common stock and classified within equity. Therefore, an adjustment to recognize the Sponsor Earnout Shares would have no net impact on any financial statement line item as it would simultaneously increase and decrease additional paid-in capital. Thus, no adjustment has been applied to the unaudited pro forma combined financial information related to the Sponsor Earnout Shares.

Basis of Pro Forma Presentation

The historical financial information has been adjusted to give pro forma effect to the transaction accounting required for the Business Combination. The unaudited pro forma condensed combined financial information reflects the application of transaction accounting adjustments and are based upon available information and certain assumptions, described in the accompanying notes hereto, that management believes are reasonable under the circumstances.

Upon the consummation of the Business Combination, the shares outstanding as presented in the unaudited pro forma condensed combined financial statements include the following:

| | <u>Shares</u> | <u>%</u> |
|---|--------------------------|----------------------|
| New AON Class B shareholders (Former AON A & B shareholders) | 25,109,551 | 60.7% |
| New AON Class B Warrants (Former AON A-1 shareholders) | 3,000,245 | 7.3% |
| New AON Series A Preferred stock (Former AON C Unit shareholders) | 6,651,610 | 16.1% |
| New AON Class A common stock (Former AON B-1 shareholders) | 1,047,343 | 2.5% |
| New AON Class A common stock (Former DTOC Class A shareholders) | 147,511 | 0.4% |
| New AON Class A common stock (Former DTOC sponsor) | 5,419,375 | 13.1% |
| Shares Outstanding at Closing | <u>41,375,635</u> | <u>100.0%</u> |

Immediately after giving effect to the Business Combination, there were (i) 9,532,354 issued and outstanding shares of New AON Class A Common Stock, which includes common stock held by DTOC stockholders and Digital Transformation Sponsor LLC (the "Sponsor") (including those shares subject to vesting and forfeiture pursuant to the Sponsor Support Agreement), but does not include shares which may be issued under the Incentive Equity Plan and (ii) 25,109,551 issued and outstanding shares of New AON Class B Common Stock, which excludes the Class B Warrants.

The following percentages exclude the Class B Warrants and include the Earnout Shares in the calculations. As of the Closing Date, (i) AON's equityholders (not including AEA Growth) beneficially owned approximately 63.3% of the outstanding shares of New AON Common Stock, (ii) the public stockholders of DTOC immediately prior to the Closing beneficially owned approximately 0.4% of the outstanding shares of New AON Common Stock, (iii) the Sponsor and the DTOC officers and directors immediately prior to the Closing Date beneficially owned approximately 20.2% of the outstanding shares of New AON Common Stock, and (iv) AEA Growth beneficially owned approximately 16.1% of the outstanding shares of New AON Common Stock (based upon conversion of the New AON Series A Preferred Stock at an initial conversion price of \$10.00 per share).

Assumptions and estimates underlying the unaudited pro forma adjustments set forth in the unaudited pro forma condensed combined financial statements are described in the accompanying notes. The unaudited pro forma condensed combined financial statements have been presented for illustrative purposes only and are not necessarily indicative of the operating results and financial position that would have been achieved had the Business Combination and related transactions occurred on the dates indicated. Further, the unaudited pro forma condensed combined financial statements do not purport to project the future operating results or financial position of DTOC following the completion of the Business Combination and related transactions. The unaudited pro forma adjustments represent management's estimates based on information available as of the date of these unaudited pro forma condensed combined financial statements and are subject to change as additional information becomes available and analyses are performed. DTOC and the Company have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

Unaudited Pro Forma Condensed Combined Balance Sheet
As of June 30, 2023
(amounts in thousands, except share amounts)

| | American Oncology Network, LLC (Historical) | Digital Transformation Opportunities Corp. (Historical) | Pro Forma Transaction Accounting Adjustments | Pro Forma Combined |
|--|--|---|---|-----------------------|
| Assets | | | | |
| Current assets | | | | |
| Cash and cash equivalents | \$ 72,708 | \$ 2 | \$ 19,303 (a) | \$ 65,290 |
| | | | 99 (a) | |
| | | | (17,853) (b) | |
| | | | (4,610) (f) | |
| | | | (507) (i) | |
| | | | (3,852) (n) | |
| Short-term marketable securities | 9,984 | - | - | 9,984 |
| Restricted cash | - | - | - | - |
| Patient accounts receivable, net | 145,159 | - | - | 145,159 |
| Inventories | 41,886 | - | - | 41,886 |
| Other receivables | 32,929 | - | 338 (k) | 33,267 |
| Prepays expenses and other current assets | 3,398 | 92 | - | 3,490 |
| Current portion of notes receivable - related parties | 1,492 | - | - | 1,492 |
| Total current assets | 307,556 | 94 | (7,082) | 300,568 |
| Property and equipment, net | 35,672 | - | - | 35,672 |
| Operating lease right-of-use assets, net | 43,439 | - | - | 43,439 |
| Notes receivable - related parties | 1,752 | - | - | 1,752 |
| Other assets | 8,311 | - | (1,109) (l) | 7,202 |
| Goodwill and intangibles, net | 1,230 | - | - | 1,230 |
| Net deferred tax assets | - | - | 845 (k) | 845 |
| Cash and securities held in Trust Account | - | 19,303 | (19,303) (a) | - |
| Total assets | 397,960 | 19,397 | (26,649) | 390,708 |
| Liabilities, commitments and shareholders' equity (deficit) | | | | |
| Current liabilities | | | | |
| Accounts payable | 122,168 | 3,871 | (3,852) (n) | 122,187 |
| Promissory note - related party | - | 200 | (200) (i) | - |
| Advances from related party | - | 307 | (307) (i) | - |
| Income taxes payable | - | 1,054 | (1,054) (k) | - |
| Excise tax payable | - | 3,212 | (471) (o) | 2,741 |
| Accrued compensation related costs | 10,176 | - | - | 10,176 |
| Accrued other | 22,873 | - | (3,875) (e) | 18,998 |
| Current portion of operating lease liabilities | 7,113 | - | - | 7,113 |
| Total current liabilities | 162,330 | 8,644 | (9,759) | 161,215 |
| Long-term debt, net | 80,208 | - | - | 80,208 |
| Long-term operating lease liabilities | 39,527 | - | - | 39,527 |
| Other long-term liabilities | 8,245 | - | - | 8,245 |
| Deferred underwriting fee | - | - | - | - |
| Net deferred tax liabilities | - | - | - | - |
| Warrant liability | - | 2,251 | - | 2,251 |
| Total liabilities | 290,310 | 10,895 | (9,759) | 291,446 |
| Commitments: | | | | |
| DTOC Class A Common Stock subject to possible redemption, 1,847,069 shares at redemption value of \$10.11 at June 30, 2023 | - | 18,670 | (18,670) (b) | - |
| Mezzanine Equity: | | | | |
| Redeemable convertible preferred Class C units; 2,459 units outstanding at June 30, 2023 (Liquidation preference of \$65,327 at June 30, 2023) | 62,897 | | (62,897) (c) | - |
| New AON Series A convertible preferred stock, \$0.0001 par value; 7,500,000 shares authorized; 6,651,610 issued and outstanding at June 30, 2023, with an aggregate liquidation preference of \$65,327 at June 30, 2023. | | | 62,897 (c) | 62,897 |
| Stockholders' equity (deficit) | | | | |
| New AON Class A common stock, \$0.0001 par value; 200,000,000 shares authorized; 6,614,229 shares issued and outstanding at June 30, 2023 | - | - | 1 (g) | 1 |
| New AON Class B common stock, \$0.0001 par value; 100,000,000 | - | - | 3 (g) | 3 |

| | | | | |
|--|-------------------|------------------|--------------------|-------------------|
| shares authorized; 28,109,796 shares issued and outstanding at June 30, 2023 | | | | |
| DTOC Class A common stock, \$0.0001 par value; 200,000,000 shares authorized; 8,262,500 shares issued and outstanding (excluding 1,847,069 shares subject to possible redemption) at June 30, 2023 | - | 1 | (1) (g) | - |
| DTOC Class B common stock, \$0.0001 par value; 20,000,000 shares authorized; 75,000 shares issued and outstanding at June 30, 2023 | - | - | - | - |
| Class A units; 7,725 units outstanding at June 30, 2023 | 7,725 | - | (7,725) (g) | - |
| Class A-1 units; 904 units outstanding at June 30, 2023 | 31,040 | - | (31,040) (g) | - |
| Class B units; 2,322 units outstanding at June 30, 2023 | 80 | - | (80) (g) | - |
| Noncontrolling interest | 134 | - | 33,952 (h) | 34,086 |
| Additional paid-in capital | - | 11,202 | 817 (b) | 4,242 |
| | | | (21,371) (d) | |
| | | | 38,842 (g) | |
| | | | 2,526 (e) | |
| | | | 4,659 (e) | |
| | | | - (j) | |
| | | | (138) (f) | |
| | | | (3,864) (f) | |
| | | | 845 (k) | |
| | | | 5,257 (m) | |
| | | | (33,994) (h) | |
| | | | (1,109) (l) | |
| | | | 99 (a) | |
| | | | 471 (o) | |
| Accumulated other comprehensive loss | (29) | - | - | (29) |
| Accumulated earnings (deficit) | 5,803 | (21,371) | 21,371 (d) | (1,938) |
| | | | 3,864 (f) | |
| | | | (3,864) (f) | |
| | | | (608) (f) | |
| | | | (5,257) (m) | |
| | | | 1,392 (k) | |
| | | | 1,349 (e) | |
| | | | (4,659) (e) | |
| | | | (99) (a) | |
| | | | 99 (a) | |
| | | | 42 (h) | |
| Total Stockholders' equity (deficit) | <u>44,753</u> | <u>(10,168)</u> | <u>1,780</u> | <u>36,365</u> |
| Total liabilities, commitments, mezzanine equity and stockholders' equity (deficit) | <u>\$ 397,960</u> | <u>\$ 19,397</u> | <u>\$ (26,649)</u> | <u>\$ 390,708</u> |

Unaudited Pro Forma Condensed Combined Statement of Operations
For the six months ended June 30, 2023
(amounts in thousands, except per share amounts)

| | American Oncology Network, LLC (Historical) | Digital Transformation Opportunities Corp. (Historical) | Reclassification Adjustments | Pro Forma Transaction Accounting Adjustments | | Pro Forma Combined |
|---|--|---|---------------------------------|---|------|-----------------------|
| Revenue | | | | | | |
| Patient service revenue, net | \$ 613,486 | \$ - | \$ - | \$ - | | \$ 613,486 |
| HHS grant income | - | - | - | - | | - |
| Other revenue | 5,212 | - | - | - | | 5,212 |
| Total revenue | <u>618,698</u> | <u>-</u> | <u>-</u> | <u>-</u> | | <u>618,698</u> |
| Costs and expenses: | | | | | | |
| Cost of Revenue | 569,933 | - | - | - | | 569,933 |
| General and administrative expenses | 52,915 | - | 754 | (3,618) | (oo) | 50,051 |
| Transaction related expenses | - | - | 1,757 | (1,757) | (oo) | - |
| Formation and operating costs | - | 2,511 | (2,511) | - | | - |
| Total costs and expenses | <u>622,848</u> | <u>2,511</u> | <u>-</u> | <u>(5,375)</u> | | <u>619,984</u> |
| Income (loss) from operations | (4,150) | (2,511) | - | 5,375 | | (1,286) |
| Nonoperating income (expense): | | | | | | |
| Interest expense | (2,968) | - | - | - | | (2,968) |
| Interest income | 126 | 2,561 | - | (2,561) | (ll) | 126 |
| Other income (expense), net | (4,380) | - | - | 5,066 | (pp) | 686 |
| Reduction of deferred underwriting fee payable | - | 420 | - | (420) | (ll) | - |
| Unrealized gain (loss) on marketable securities held in Trust Account | - | (139) | - | 139 | (kk) | - |
| Change in fair value of warrant liability | - | (1,376) | - | - | | (1,376) |
| Income (loss) before income taxes | (11,372) | (1,045) | - | 7,599 | | (4,818) |
| Income tax expense (benefit) | - | 487 | - | 909 | (mm) | 1,396 |
| Net income (loss) before equity loss in affiliate | (11,372) | (1,532) | - | 6,690 | | (6,214) |
| Equity loss in affiliate | (219) | - | - | - | | (219) |
| Net Income (loss) | (11,591) | (1,532) | - | 6,690 | | (6,433) |
| Net income (loss) attributable to noncontrolling interest | - | - | - | (5,072) | (nn) | (5,072) |
| Net income (loss) attributable to New AON | <u>\$ (11,591)</u> | <u>\$ (1,532)</u> | <u>\$ -</u> | <u>\$ 11,762</u> | | <u>\$ (1,361)</u> |

Unaudited Pro Forma Condensed Combined Statement of Operations
For the year ended December 31, 2022
(amounts in thousands, except per share amounts)

| | American Oncology Network, LLC (Historical) | Digital Transformation Opportunities Corp. (Historical) | Reclassification Adjustments | Pro Forma Transaction Accounting Adjustments | | Pro Forma Combined |
|---|--|---|---------------------------------|---|------|-----------------------|
| Revenue | | | | | | |
| Patient service revenue, net | \$ 1,137,932 | \$ - | \$ - | \$ - | | \$ 1,137,932 |
| HHS grant income | - | - | - | - | | - |
| Other revenue | 11,738 | - | - | - | | 11,738 |
| Total revenue | 1,149,670 | - | - | - | | 1,149,670 |
| Costs and expenses: | | | | | | |
| Cost of Revenue | 1,054,217 | - | - | - | | 1,054,217 |
| General and administrative expenses | 89,887 | - | 294 | (3,277) | (ff) | 92,161 |
| | | | | 5,257 | (gg) | |
| | | | | - | | |
| Transaction related expenses | | | 2,095 | 4,472 | (ee) | 15,219 |
| | | | | 3,618 | (hh) | |
| | | | | 1,757 | (hh) | |
| | | | | 3,277 | (ff) | |
| Formation and operating costs | - | 2,389 | (2,389) | - | | - |
| Total costs and expenses | 1,144,104 | 2,389 | - | 15,104 | | 1,161,597 |
| Income (loss) from operations | 5,566 | (2,389) | - | (15,104) | | (11,927) |
| Nonoperating income (expense): | | | | | | |
| Interest expense | (3,417) | - | - | - | | (3,417) |
| Interest income | 151 | 5,129 | - | (5,129) | (bb) | 151 |
| Other income (expense), net | 289 | - | - | 1,349 | (ii) | (3,021) |
| | | | | (4,659) | (ii) | |
| Unrealized gain (loss) on marketable securities held in Trust Account | - | 139 | - | (139) | (aa) | - |
| Change in fair value of warrant liability | - | 8,680 | - | - | | 8,680 |
| Income (loss) before income taxes | 2,589 | 11,559 | - | (23,682) | | (9,534) |
| Income tax expense (benefit) | - | 1,027 | - | (2,302) | (cc) | (1,275) |
| Net income (loss) | 2,589 | 10,532 | - | (21,380) | | (8,259) |
| Net income (loss) attributable to noncontrolling interest | - | - | - | (5,269) | (dd) | (5,269) |
| Net income (loss) attributable to New AON | \$ 2,589 | \$ 10,532 | \$ - | \$ (16,111) | | \$ (2,990) |

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Basis of Presentation

The pro forma adjustments have been prepared as if the Business Combination had been consummated on June 30, 2023, in the case of the unaudited pro forma condensed combined balance sheet, and, in the case of the unaudited pro forma condensed combined statement of operations, as if the Business Combination had been consummated on January 1, 2022, the beginning of the earliest period presented in the unaudited pro forma condensed combined statement of operations.

The unaudited pro forma condensed combined financial information has been prepared assuming the following methods of accounting in accordance with GAAP.

The Business Combination will be accounted for as a reverse recapitalization in accordance with GAAP. Accordingly, for accounting purposes, the financial statements of the post-combination entity will represent a continuation of the financial statements of the Company with the acquisition being treated as the equivalent of the Company issuing stock for the net assets of DTOC, accompanied by a recapitalization.

The net assets of DTOC will be stated at historical cost, with no goodwill or other intangible assets recorded.

The pro forma adjustments represent management's estimates based on information available as of the date of this Form 8-K and are subject to change as additional information becomes available and additional analyses are performed. Management considers this basis of presentation to be reasonable under the circumstances.

One-time direct and incremental transaction costs anticipated to be incurred prior to, or concurrent with, the Closing are reflected in the unaudited pro forma condensed combined balance sheet as a direct reduction to the post-combination entity's additional paid-in capital and are assumed to be cash settled.

2. Adjustments and Assumptions to the Unaudited Pro Forma Condensed Combined Balance Sheet as of June 30, 2023

The adjustments included in the unaudited pro forma condensed combined balance sheet as of June 30, 2023, are as follows:

- (a) Represents the reclassification of cash and investments of \$19.4 million held in the Trust Account that become available in conjunction with the Business Combination. Of the total \$19.4 million, \$0.1 million of interest was earned in the account after the issuance of DTOC's historical unaudited condensed consolidated financial statements as of and for the six months ended June 30, 2023. As such, \$0.1 million of interest income was recorded in accumulated deficit and subsequently presented in APIC, to reflect the elimination of DTOC's historical accumulated deficit for the net income recognized.
- (b) Represents the redemption of 1,699,558 shares of DTOC Class A Common Stock for approximately \$17.8 million and the reclassification of 147,511 shares of DTOC Class A common stock and additional paid-in capital for approximately \$0.9 million, using par value of \$0.0001 per share and the issuance of shares to DTOC public shareholders.
- (c) Represents the pro forma adjustment to record the conversion of the Series A Investment net proceeds pursuant to the June 7, 2023 Unit Purchase Agreement, in which the AON Class C Preferred Investor purchased 2,459 AON Class C units at an aggregate purchase price of \$65.0 million, net of \$0.8 million of issuance costs and \$1.3 million of Class C purchase options rights classified as a derivative liability. Pursuant to the Business Combination Agreement, the pro forma adjustment also reflects issuance of New AON Series A Preferred Stock based on the Per Company Class C unit Exchange Ratio.

New AON has preliminarily evaluated the accounting for the New AON Series A Preferred Stock in accordance with the requirements of ASC 480-10-S99. For purposes of the unaudited pro forma condensed combined financial information, the Series A Investment is classified as mezzanine equity. However, the evaluation and finalization of accounting conclusions including, but not limited to, classification of the instrument, impact to earnings per share, analysis of any potential embedded derivatives and the impact to other preferred/equity units are ongoing and subject to change.

- (d) Reflects the elimination of DTOC's historical accumulated deficit.
- (e) Represents the pro forma adjustment to remove AON's Class C unit derivative liability. Upon the consummation of the Business Combination, the option to purchase additional Class C units expires. In addition, the pro forma adjustment represents the issuance of 718,549 shares of New AON Class B common stock to the Class A-1 unit holders in the amount of \$7.2 million, pursuant to the AON Class A-1 Anti-dilution Feature, presented as additional paid in capital. Of the total \$7.2 million, the Company recorded a loss of \$4.7 million in accumulated earnings to reflect the fair value of the New AON Class B common stock in excess of the derivative liability recorded as of June 30, 2023. Upon the consummation of the Business Combination, AON's Class A-1 unit holders do not retain the Anti-dilution Feature that was classified on AON's condensed consolidated balance sheet as a derivative liability.
- (f) Represents the estimated incremental transaction costs incurred by DTOC and the Company of approximately \$4.6 million for advisory, banking, printing, legal and accounting fees.

Of the total \$4.6 million, transaction expenses of \$4.5 million are expected to be expensed as incurred, as reflected in adjustment (ee) in the income statement for the year ended December 31, 2022. DTOC transaction expenses of \$3.9 million were recorded in accumulated deficit and subsequently presented in APIC, to reflect the elimination of DTOC's historical accumulated deficit for the expenses incurred and \$0.6 million of AON transaction expenses were presented in accumulated earnings, to reflect the expense incurred. The remaining \$0.1 million in costs that were direct and incremental to the equity raise were netted against the proceeds of the Business Combination.

| <i>(amounts in thousands)</i> | Capitalized | Expensed | Total |
|-------------------------------|-------------|--------------|--------------|
| DTOC | - | 3,864 | 3,864 |
| AON | 138 | 608 | 746 |
| Total | <u>138</u> | <u>4,472</u> | <u>4,610</u> |

- (g) Represents the recapitalization of the Company's Class A, Class A-1, Class B-1 and Class B outstanding common shares, using par value of \$0.0001 per share, and the recapitalization of DTOC's Class A common stock, using par value of \$0.0001 per share, into New AON Class A common stock and New AON Class B common stock, as follows:

| <i>in thousands, except share amounts</i> | Shares | Par Value |
|--|-------------------|-------------|
| New AON Class B shareholders (Former AON A & B shareholders) | 25,109,551 | \$ 3 |
| New AON Class B Warrants (Former AON A-1 shareholders) | 3,000,245 | \$ - |
| New AON Class A common stock (Former AON B-1 shareholders) | 1,047,343 | \$ - |
| New AON Class A common stock (Former DTOC sponsor) | 5,419,375 | \$ 1 |
| Shares Outstanding at Closing | <u>34,576,514</u> | <u>\$ 4</u> |

The recapitalization of the Company's Class A, Class A-1, and Class B shares included in accumulated paid in capital is calculated as follows:

| <i>in thousands</i> | Additional paid-in capital |
|---|---|
| Book Value of AON Class A units | \$ 7,725 |
| Book Value of AON Class A-1 units | 31,040 |
| Book Value of AON Class B units | 80 |
| Total Historical AON Class A, Class A-1, Class B stockholders' equity | \$ 38,845 |
| Less: par value | 3 |
| Additional paid in capital | <u>\$ 38,842</u> |

- (h) The financial results of AON and its wholly-owned subsidiaries are consolidated with and into New AON, and following the Business Combination, a portion of the consolidated net income (loss) of AON, which the former AON unitholders are entitled to or are required to absorb, are allocated to the noncontrolling interests (the "NCI"). For purposes of the unaudited pro forma condensed combined financial information, a controlling interest of 32.06% and a noncontrolling interest of 67.94% were used. The Company has excluded Earnouts in the calculation of the ownership interest in AON as the Earnouts are subject to forfeiture if the achievement of a stock price threshold is not met within five years of the Business Combination.

| <i>(amounts in thousands)</i> | Pro Forma Transaction Accounting Adjustments |
|---|---|
| Historical Accumulated earnings (deficit) | 5,803 |
| Less: Transaction Expenses attributed to AON | 608 |
| Less : Share -Based Compensation attributed to AON | 5,257 |
| Adjusted Accumulated earnings (deficit) | (62) |
| Noncontrolling interest percentage | 67.94% |
| Noncontrolling interest | (42) |
| Historical Additional paid-in capital | - |
| Less: Capitalized Offering Costs | 1,247 |
| Plus: Vesting of AON B unit profit interest awards and issuance of AON B-1 shares | 5,257 |
| Plus: Recapitalization of Class A, A-1, B Shareholders | 46,027 |
| Adjusted Additional paid-in-capital | 50,037 |
| Noncontrolling interest percentage | 67.94% |
| Noncontrolling interest | 33,994 |
| Total noncontrolling interest | <u>33,952</u> |

New AON is currently evaluating the requirements of ASC 480-10-S99 regarding permanent versus mezzanine equity presentation of the noncontrolling interest. For purposes of the unaudited pro forma condensed combined financial information, noncontrolling interest is classified as permanent equity. However, the evaluation and finalization of accounting conclusions regarding the classification are ongoing and subject to change in accordance with the terms contained within the final agreement.

- (i) The pro forma adjustment represents the repayment of the promissory note and Sponsor advances upon the consummation of the Business Combination. On March 6, 2023, in connection with the Special Meeting held to approve the Extension Proposal, the Sponsor deposited \$0.2 million into the Trust Account to fund the Extension Proposal. As repayment, DTOC issued an unsecured promissory note to the Sponsor for \$0.2 million. The promissory note bears no interest and all unpaid principal under the promissory note will be due and payable in full up upon the consummation of the Business Combination. The outstanding balance of the unsecured promissory note as of June 30, 2023 is \$0.2 million. Further, during the six months ended June 30, 2023, the Sponsor advanced the Company \$0.3 million for working capital purposes of which \$0.0 was repaid during the six months ended June 30, 2023.

(j) Represents the issuance of 3,002,245 shares of AON Class B Prefunded Warrants to former AON A-1 unitholders with an exercise price of \$0.01. The AON Class B Prefunded Warrants are exercisable into one share of New AON Class B Common Stock. A share of New AON Class B Common Stock, together with an AON common unit, may be exchanged for one share of New AON Class A common stock. Because New AON Class B Common Stock has limited liquidity or value if the holder does not also possess an AON common unit, and because the AON Class B Prefunded Warrants are exercisable into New AON Class B Common Stock, the Company has estimated fair value of the warrants at \$0.00. New AON is currently evaluating the accounting treatment related to these warrants. For purposes of the unaudited pro forma condensed combined financial information, these warrants are classified as liability instruments. However, the evaluation and finalization of accounting conclusions regarding the classification are ongoing and subject to change based on final agreements.

(k) Represents the pro forma adjustment to recognize a net deferred tax asset of \$0.8 million and the pro forma adjustment to reflect an income tax receivable of \$0.3 million.

Temporary differences, resulting from differences including our investment in AON and a valuation allowance, resulted in a pro forma net deferred tax asset of \$0.8 million as of June 30, 2023.

(l) Represents the reclassification of capitalized offering costs included in other assets to additional paid-in-capital in the amount of \$1.1 million.

(m) Represents the issuance of both the AON Class B-1 units and the accelerated vesting of the existing AON Class B profit interest awards noted in the pro forma adjustment (gg), in the aggregate amount of \$5.3 million, recorded in accumulated deficit and accumulated paid-in-capital.

(n) Represents the payment of the accrued DTOC transaction expenses included in Accounts Payable in the Historical DTOC balance sheet as of June 30, 2023.

(o) The pro forma adjustment represents the reduction of excise tax payable for the issuance New AON Series A Preferred Stock, in the aggregate amount of \$0.7 million, offset by the accrual of an additional \$0.2 million in excise tax for the redemption of 1,699,558 shares of New AON Class A common stock, in the net amount of \$0.5 million, recorded in excise tax payable and APIC.

3. Adjustments and Assumptions to the Unaudited Pro Forma Condensed Combined Statement of Operations for the six months ended June 30, 2023

In the unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2023, \$0.7 million and \$1.8 million of historical Digital Transformation Corp. costs have been reclassified from “Formation and operating costs” to “General and administrative expenses” and “Transaction related expenses”, respectively, to align financial statement descriptions.

The adjustments included in the unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2023, are as follows:

(kk) Reflects the elimination of unrealized gains and losses on marketable securities held in the Trust Account.

(ll) Reflects the elimination of interest earned on marketable securities held in the Trust Account and the elimination of the impact of changes to the deferred underwriting fee.

(mm) Reflects the income tax effect related to the transaction accounting adjustments, and the controlling interest of AON historical results for the AON partnership entities, using a pro forma combined blended U.S. federal and state statutory tax rate of 25.00% for the six months ended June 30, 2023.

(nn) The net loss of New AON was reduced by the estimated noncontrolling interest ownership of 67.94%, as follows:

| <i>(amounts in thousands)</i> | Pro Forma Transaction Accounting Adjustments |
|--|---|
| Historical Net income (loss) | (11,591) |
| <i>Plus: Reversal of AON transaction expenses attributed to fiscal year 2022</i> | 3,618 |
| <i>Plus: Tax benefit (expense) attributed to AON</i> | 508 |
| Adjusted Historical Net income (loss) | (7,465) |
| Noncontrolling interest percentage | 67.94% |
| Net income (loss) attributable to noncontrolling interest | (5,072) |

(oo) Reflects the removal of AON and DTOC transaction expenses incurred in the six months ended June 30, 2023. The unaudited pro forma condensed combined statement of operations give effect to the Business Combination as if it had been consummated on January 1, 2022. As such, all transaction expenses are reflected in the year ended December 31, 2022 statement of operations, see Note (hh).

(pp) Reflects the reversal of \$5.1 million of other expense recorded by AON to adjust the Class A-1 unit derivative liability to fair market value in the six months ended June 30, 2023 condensed consolidated statement of operations. Upon the consummation of the Business Combination, AON's Class A-1 unit holders do not retain the Anti-dilution Feature that was classified on AON's condensed consolidated balance sheet as a derivative liability.

4. Adjustments and Assumptions to the Unaudited Pro Forma Condensed Combined Statement of Operations for the year ended December 31, 2022

In the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2022, \$0.3 million and \$2.0 million of historical Digital Transformation Corp. costs have been reclassified from "Formation and operating costs" to "General and administrative expenses" and "Transaction related expenses," respectively, to align financial statement descriptions.

The adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2022, are as follows:

(aa) Reflects the elimination of unrealized gains and losses on marketable securities held in the Trust Account.

(bb) Reflects the elimination of interest earned on marketable securities held in the Trust Account.

(cc) Reflects the income tax effect related to the transaction accounting adjustments, and the controlling interest of AON historical results for the AON partnership entities, using a pro forma combined blended U.S. federal and state statutory tax rate of 25.00%, for the year ended December 31, 2022.

(dd) The net loss of New AON was reduced by the estimated noncontrolling interest ownership of 67.94%, as follows:

| <i>(amounts in thousands)</i> | Pro Forma Transaction Accounting Adjustments |
|--|---|
| Historical Net income (loss) | 2,589 |
| <i>Less: Incremental Transaction Expenses attributed to AON</i> | 608 |
| <i>Less: AON transaction expenses attributed to fiscal year 2022</i> | 3,618 |
| <i>Less: Stock Compensation Expense attributed to AON</i> | 5,257 |
| <i>Less: Tax expense attributed to AON</i> | 861 |
| Adjusted Historical Net income (loss) | (7,755) |
| Noncontrolling interest percentage | 67.94% |
| Net income (loss) attributable to noncontrolling interest | (5,269) |

- (ee) Reflects the incremental portion of transaction costs expected to be expensed as incurred based on the nature of the costs, as noted at adjustment (f).
- (ff) Reflects \$3.3 million of historical AON costs that have been reclassified from “General and administrative expenses” to “Transaction related expenses” to align financial statement descriptions.
- (gg) Reflects \$5.3 million of stock compensation related to the issuance of both 1,047,745 million shares of AON Class B-1 units at a fair market value of \$5.01 per share, and the accelerated vesting of 405 shares of AON Class B profit interest awards at a grant date fair market value of \$25.59 per share.
- (hh) Reflects \$3.6 million and \$1.8 million of AON and DTOC transaction expenses attributed to the December 31, 2022 Statement of Operations, as noted in pro forma adjustment (oo).
- (ii) Reflects both the gain of \$1.3 million recognized to reflect the expiration of the option to purchase additional Class C units and the loss of \$4.7 million to reflect the issuance of 718,549 shares of New AON Class B common stock to the Class A-1 unit holders, as noted in adjustment (e). Upon the consummation of the Business Combination, the option to purchase additional Class C units and the Anti-dilution Feature of the Class A-1 unit holders, each of which are liability-classified, no longer apply.

5. Earnings per Share Information

The pro forma weighted average shares calculations have been performed for the six months ended June 30, 2023 and the year ended December 31, 2022 using the historical weighted average shares outstanding, and the issuance of additional shares in connection with the Business Combination, assuming the transaction occurred on January 1, 2022. As the Business Combination is being reflected as if it had occurred at the beginning of the periods presented, the calculation of weighted average share outstanding for both basic and diluted earnings per share assumes that the shares issuable relating to the Business Combination have been outstanding for the entire periods presented.

| (In thousands, except per share data) | For the Six Months Ended June 30, 2023 | For the Year Ended December 31, 2022 |
|--|---|---|
| Net loss | (6,433) | (8,259) |
| Net loss attributable to New AON | (1,361) | (2,990) |
| Less: Mandatory Preferred Stock Dividend | 2,812 | 5,304 |
| Net loss attributable to common stockholders | (4,173) | (8,294) |
| Weighted average common shares outstanding - Basic & Diluted(1) | 6,614,229 | 6,614,631 |
| Net loss per share attributable to Class A common stockholders – Basic & Diluted | (0.63) | (1.25) |
| Weighted average shares outstanding | | |
| New AON Class A common stock (Former DTOC Class A shareholders) | 147,511 | 147,511 |
| New AON Class A common stock (Former AON B-1 shareholders) | 1,047,343 | 1,047,745 |
| New AON Class A common stock (Former DTOC sponsor) | 5,419,375 | 5,419,375 |
| Basic weighted average shares outstanding | 6,614,229 | 6,614,631 |

- (1) The net loss for the six months ended June 30, 2023 and the year ended December 31, 2022 results in an anti-dilutive effect on earnings per share for all potentially dilutive instruments, therefore basic weighted average shares outstanding equals diluted weighted average shares outstanding for the period.