

---

**INCITE CO-INVESTMENT FUND  
SECURITIES PURCHASE AGREEMENT**

**BY AND AMONG**

**[COMPANY],**

**TENNESSEE TECHNOLOGY DEVELOPMENT CORPORATION  
d/b/a LAUNCH TENNESSEE**

**AND**

**THE APPROVED INVESTOR(S) LISTED IN ANNEX A**

---

**INCITE CO-INVESTMENT FUND  
SECURITIES PURCHASE AGREEMENT**

<i>Name of Company</i>			<i>INCITE No.</i>
<i>Street Address for Notices</i>			<i>Organizational Form (e.g., corporation, limited liability company)</i>
<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Jurisdiction of Organization</i>
<i>Name of Contact Person to Receive Notices</i>			<i>Phone Number</i>
<i>Fax Number for Notices</i>			<i>Effective Date</i>

THIS SECURITIES PURCHASE AGREEMENT (this “Agreement”) is made as of the Effective Date set forth above (the “Effective Date”) among the Tennessee Technology Development Corporation d/b/a Launch Tennessee, a Tennessee non-profit corporation (“LaunchTN”), the Company named above, an entity existing under the laws of the Jurisdiction of Organization stated above and in the Organizational Form stated above (the “Company”), and the Approved Investor(s) named in Annex A (the “Approved Investor(s)”). In this Agreement, LaunchTN and the Approved Investor(s) are collectively referred to as the “Investors” and each separately as an “Investor.” The Company and Approved Investor(s) have elected to participate in the INCITE Co-Investment Fund Program (the “Fund”). This Agreement contains the terms and conditions on which the Company intends to issue securities to LaunchTN and the Approved Investor(s). The board of directors of LaunchTN has approved LaunchTN’s administration of the Fund in furtherance of the purposes for which LaunchTN was established by the General Assembly of the State of Tennessee, as set forth in Section 4-14-305 of the Tennessee Code Annotated.

This Agreement consists of the following attached parts, all of which together constitute the entire agreement among the Investors and the Company (collectively, the “Parties”) with respect to the subject matter hereof, superseding all prior written and oral agreements and understandings among the Parties with respect to such subject matter:

- |  |   |
|--|---|
| <p>Annex A: Information Specific to the Approved Investor(s)</p> <p>Annex B: Information Specific to the Company and the Investment</p> <p>Annex C: Definitions</p> <p>Annex D: General Terms and Conditions</p> <p>Annex E: Disclosure Schedule</p> <p>Annex F: Investors’ Rights Agreement</p> | <p>Annex G: Required Amendments to Organizational Documents</p> <p>Annex H: Form of Officer’s Certificate</p> <p>Annex I: Form of Annual Report and Certification</p> <p>Annex J: Form of Legal Opinion</p> <p>Annex K: Form of Co-Investment Agreement</p> |
|--|---|

This Agreement may be executed in any number of counterparts, each being deemed to be an original instrument, and all of which will together constitute the same agreement. Executed signature pages to this Agreement may be delivered by facsimile or electronic mail attachment.

*[Signatures follow]*

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the duly authorized representatives of the Parties as of the Effective Date.

TENNESSEE TECHNOLOGY DEVELOPMENT  
CORPORATION d/b/a LAUNCH TENNESSEE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT COMPANY NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT APPROVED INVESTOR NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Add additional Approved Investor signature blocks as necessary]**

**ANNEX A**

**INFORMATION SPECIFIC TO THE APPROVED INVESTOR(S)**

---

1. **Approved Investor Information:**

(a) *Lead Approved Investor:*

<i>Name of Investor</i>	<i>Approved Investor No.</i>
<i>Street Address for Notices</i>	<i>Organizational Form (e.g., corporation, limited liability company)</i>
<i>City</i> <i>State</i> <i>Zip Code</i>	<i>Jurisdiction of Organization</i>
<i>Fax Number for Notices</i> <i>Phone Number</i>	<i>Name of Contact Person to Receive Notices</i>
	<i>Amount of Investment:</i> _____

(b) *Additional Approved Investor(s) (if applicable) (attach additional pages if necessary):*

<i>Name of Investor</i>	<i>Approved Investor No.</i>
<i>Street Address for Notices</i>	<i>Organizational Form (e.g., individual, corporation, limited liability company)</i>
<i>City</i> <i>State</i> <i>Zip Code</i>	<i>Jurisdiction of Organization</i>
<i>Fax Number for Notices</i> <i>Phone Number</i>	<i>Name of Contact Person to Receive Notices</i>
	<i>Amount of Investment:</i> _____

2. **Total Investment:**

Total amount of all Approved Investor investments from Section 1 above: \$ \_\_\_\_\_.

**ANNEX B**

**INFORMATION SPECIFIC TO THE COMPANY AND THE INVESTMENT**

---

1. **Terms of the Purchase:**

(a) *Securities Purchased:*

---

*Full Title of Securities*

(b) *Purchase Price:*

---

*Price Per Unit or Share*

(c) *Securities Purchased by LaunchTN:*

---

*Number of Units/Shares or  
Percentage Interest  
Purchased*

---

*Amount of Investment*

(d) *Securities Purchased by Approved  
Investor(s):*

---

*Number of Units/Shares or  
Percentage Interest  
Purchased*

---

*Amount of Investment*

(e) *Total Number of Units/Shares or  
Percentage Interest Purchased and  
Amount of Investment:*

---

*Total of (c) and (d) Above*

---

*Total of (c) and (d) Above*

2. **Closing:**

Location of Closing: Virtual

Time of Closing: 10:00 a.m. (CST)

Date of Closing: [\_\_\_\_\_]

3. **Company Wire Information:**

*Company wire information for payment of the Purchase Price:*

ABA Number:

Bank:

Account Name:

Account Number:

Beneficiary:

## ANNEX C

### DEFINITIONS

---

1. Definitions. Except as otherwise specified herein, the following terms have the respective meanings set forth below for all purposes of this Agreement.

“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, “controlling” (including, with correlative meanings, the terms “controlled by” and “under common control with”), when used with respect to any Person, means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and/or policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Application Date” means the date on which LaunchTN certified the investment set forth in the Qualified Investment Application with respect to the Purchase of the Securities.

“Code” means the Internal Revenue Code of 1986, as amended, and all regulations issued or promulgated thereunder.

“Company Financial Statements” means the consolidated (if applicable) financial statements of the Company as of and for the two most recent Company fiscal years ended prior to the Effective Date, and all notes thereto, and the consolidated (if applicable) financial statements of the Company as of and for the most recent quarter ended, including in each case the consolidated (if applicable) balance sheet of the Company and the related statements of income, cash flows and changes in equity.

“Company Material Adverse Effect” means a material adverse effect on (i) the business, results of operations, condition (financial or otherwise), or prospects of the Company and its consolidated subsidiaries taken as a whole; provided, however, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the Effective Date in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company operates, (B) changes or proposed changes after the Effective Date in GAAP, or authoritative interpretations thereof, or (C) changes or proposed changes after the Effective Date in securities and other Laws of general applicability (in the case of each of clauses (A), (B) and (C), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company relative to comparable organizations); or (ii) the ability of the Company to consummate the Purchase and other transactions contemplated by this Agreement and perform its obligations hereunder and under the Required Amendments to Organizational Documents on a timely basis.

“Disclosure Schedule” means that certain schedule to this Agreement delivered by the Company to the Investors prior to and made current, complete, and accurate as of the Effective Date, setting forth, among other things, items the disclosure of which is necessary or appropriate in response to an express disclosure requirement contained in a provision hereof. The Disclosure Schedule is contained in Annex E of this Agreement.

“Encumbrance” means any lien, claim, attachment, garnishment, imperfection of title, pledge, mortgage, deed of trust, hypothecation, security interest, charge, option, restriction, easement, license, reversionary interest, right of refusal, voting trust arrangement, buy-sell agreement, preemptive right or other adverse claim, encumbrance or right of any nature.

“Environmental Laws” shall mean any and all Laws (including without limitation common law duties established by courts or any other Governmental Entity) pertaining or relating to workplace safety, pollution or the protection of human health or the environment in effect on the Effective Date, whether federal, state, local or foreign, including without limitation the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Toxic Substances Control Act, each as may be amended, and all state, local and foreign counterparts of the foregoing federal laws.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Equity Holders” means shareholders, stockholders, members, partners, or other holders of a Company equity interest, including without limitation holders of options, warrants, or other rights to purchase or acquire any securities of the Company.

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

“Executive Officers” means the Company’s “executive officers” as defined in Rule 3b-2 under the Exchange Act (regardless of whether or not such rule is applicable to the Company).

“Fund Program Guidelines” means the INCITE Co-Investment Fund Program Guidelines available at [www.tntechology.org/incite](http://www.tntechology.org/incite), which may be amended, modified, or supplemented by the Tennessee Department of Economic and Community Development from time to time.

“GAAP” means generally accepted accounting principles in the United States.

“General Terms and Conditions” means Annex D of this Agreement.

“Governmental Entity” means any court, agency, arbitrator, mediator, tribunal, commission, bureau, legislative body, regulatory authority or other governmental or administrative body, department, instrumentality or authority, whether domestic or foreign and whether federal, state or local.

“IRS” means the United States Internal Revenue Service.

“Knowledge of the Company” means the actual knowledge after reasonable and due inquiry of the Executive Officers of the Company.

“Material Contracts” means any and all contracts, commitments, agreements and arrangements, whether oral or written, that are material to the Company or its business, properties, assets, financial condition or prospects, including without limitation any contract, commitment, agreement or arrangement (a) involving annual receipts or disbursements by the Company of \$10,000 or more, (b) not entered into in the ordinary course of business consistent with past practices, (c) not terminable by the Company upon 30 days or less notice without cost, penalty or liability and (d) relative to Intellectual Property.

“Organizational Documents” means (i) with respect to a corporation, the charter, certificate or articles of incorporation, bylaws, and shareholder agreements of the corporation; and (ii) with respect to any other entity, any charter, bylaws, articles of organization, partnership certificate, partnership agreement, membership agreement, operating agreement or similar document adopted and/or filed in connection with the creation, formation or organization of such entity.

“Permitted Encumbrances” means (a) liens for current Taxes not yet due and payable, (b) as to the Company’s leased assets, statutory interests of the lessors thereof and interests set forth in the applicable leases, (c) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s or other like liens arising in the ordinary course of business that are not material to the property encumbered and that do not result from a breach, default or violation by the Company of or under any contract, commitment, agreement, arrangement or Law, (d) as to any parcel of real property, all matters of record (excluding, however, any mortgage, deed to secure debt, deed of trust, security agreement, judgment lien or statutory claim of lien, or any other title exception or defect that is monetary in nature) and any other easement, encroachment, encumbrance or other condition that does not adversely affect in any material respect, either individually or in the aggregate, the use of such real property as currently used by the Company in the ordinary course of business or render title thereto uninsurable, (e) zoning Laws and similar governmental regulations (none of which interfere in any material respect with the operation of the business of the Company as currently conducted), and (f) purchase money liens securing rental payments under capital lease arrangements previously disclosed to the Investors.

“Person” means an individual, partnership, association, joint venture, company, corporation, limited liability company, trust, unincorporated organization or any other entity or organization, including without limitation a Governmental Entity.

“Publicly-Traded” means a company that (i) has a class of securities that is traded on a national securities exchange and (ii) is required to file periodic reports with the SEC.

“Purchase” means the purchase of the Securities by the Investors from the Company pursuant to this Agreement.

“Required Amendments to Organizational Documents” means Annex G, which shall include amendments to the Company’s Organizational Documents setting forth the terms, rights and preferences of the Securities.

“Securities” means the number and type of equity or other interests identified in the “Terms of the Purchase” section of Annex B.

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

“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest, penalty or addition imposed by any Governmental Entity.

“Tax Returns” means all returns and reports, including without limitation information and withholding returns and reports, statements, declarations, estimates, schedules, forms and other documents, of or relating to Taxes.

2. Index of Definitions. The following table, which is provided solely for convenience of reference and shall not affect the interpretation of this Agreement, identifies the location where capitalized terms are defined in this Agreement:

Term	Location of Definition
Affiliate .....	Annex C, § 1
Agreement .....	Cover Page
Ancillary Documents .....	Annex D, § 2.4(a)
Application Date .....	Annex C, § 1
Approved Investor(s) .....	Cover Page
Assigning Investor .....	Annex D, § 6.7
Business Combination .....	Annex D, § 6.7
Business Day .....	Annex D, § 6.11
Code .....	Annex C, § 1
Closing .....	Annex D, § 1.2(a)
Closing Date .....	Annex D, § 1.2(a)
Closing Deadline .....	Annex D, § 6.1(a)
Company .....	Cover Page
Company Financial Statements .....	Annex C, § 1
Company Material Adverse Effect .....	Annex C, § 1
Company Subsidiary or Company Subsidiaries .....	Annex D, § 2.1
Disclosure Schedule .....	Annex C, § 1
Discretionary Put Notice .....	Annex D, § 4.1(c)(ii)
Discretionary Put Right .....	Annex D, § 4.1(c)(ii)
Effective Date .....	Cover Page
Encumbrance .....	Annex C, § 1
Enforceability Exceptions .....	Annex D, § 2.4(a)
Environmental Laws .....	Annex C, § 1
Equity Holders .....	Annex C, § 1
Equity Compensation Plan(s) .....	Annex D, § 2.2(b)
ERISA .....	Annex C, § 1
Exchange Act .....	Annex C, § 1
Executive Officers .....	Annex C, § 1
Fund .....	Cover Page
Fund Program Guidelines .....	Annex C, § 1
GAAP .....	Annex C, § 1
General Terms and Conditions .....	Annex C, § 1
Governmental Entity .....	Annex C, § 1
Information .....	Annex D, § 4.1(a)(iii)
Intellectual Property .....	Annex D, § 2.19
Investor or Investors .....	Cover Page
IRS .....	Annex C, § 1
Jurisdiction of Organization .....	Cover Page
Knowledge of the Company .....	Annex C, § 1
Law or Laws .....	Annex D, § 2.14
Lead Approved Investor .....	Annex A
Liability or Liabilities .....	Annex D, § 2.9
Material Contracts .....	Annex C, § 1
Order .....	Annex D, § 2.11
Organizational Documents .....	Annex C, § 1

Organizational Form .....	Cover Page
Parties.....	Cover Page
Permits .....	Annex D, § 2.12
Permitted Encumbrances .....	Annex C, § 1
Person.....	Annex C, § 1
Proceeding.....	Annex D, § 2.11
Publicly-Traded.....	Annex C, § 1
Purchase .....	Annex C, § 1
Purchase Price .....	Annex D, § 1.1
Put Notice.....	Annex D, § 4.1(c)(i)
Put Right .....	Annex D, § 4.1(c)(i)
Related Party or Related Parties .....	Annex D, § 2.21
Required Amendments to Organizational Documents .....	Annex C, § 1
SBIA .....	Annex D, § 2.27
SEC .....	Annex D, § 2.10
Securities.....	Annex C, § 1
Securities Act.....	Annex C, § 1
Tax or Taxes .....	Annex C, § 1
Tax Returns.....	Annex C, § 1
Transfer .....	Annex D, § 5.2
LaunchTN .....	Cover Page

**ANNEX D**

**GENERAL TERMS AND CONDITIONS**

---

CONTENTS OF GENERAL TERMS AND CONDITIONS

		<i>Page</i>
ARTICLE I	PURCHASE AND CLOSING .....	3
1.1	Purchase.....	3
1.2	Closing.....	3
1.3	Investor Closing Conditions .....	3
1.4	LaunchTN Closing Condition(s).....	4
ARTICLE II	COMPANY REPRESENTATIONS AND WARRANTIES .....	4
2.1	Organization, Authority and Subsidiaries .....	5
2.2	Capitalization.....	5
2.3	Securities .....	6
2.4	Authorization and Enforceability .....	6
2.5	Qualified Business Requirements .....	7
2.6	Anti-Takeover Provisions.....	7
2.7	No Company Material Adverse Effect.....	7
2.8	Company Financial Statements .....	7
2.9	No Undisclosed Liabilities .....	7
2.10	Offering of Securities .....	8
2.11	Litigation .....	8
2.12	Permits.....	8
2.13	Contracts and Commitments .....	8
2.14	Compliance with Laws.....	9
2.15	Employment Matters .....	9
2.16	Taxes .....	10
2.17	Title to Assets.....	11
2.18	Environmental Matters .....	11
2.19	Intellectual Property .....	11
2.20	Books and Records.....	12
2.21	Related Party Transactions .....	12
2.22	Insurance .....	12
2.23	Dividends and Other Transactions .....	13
2.24	Certain Payments.....	13
2.25	Registration Rights .....	13
2.26	Section 83(b) Elections .....	13
2.27	Small Business Concerns .....	13
2.28	Disclosure.....	13
ARTICLE III	INVESTOR REPRESENTATIONS AND WARRANTIES .....	13
3.1	Authorization.....	13
3.2	Purchase Entirely for Own Account.....	14
3.3	Disclosure of Information .....	14

3.4	No Conflicts .....	14
3.5	Investment Intent.....	14
3.6	Investor Status .....	15
3.7	Experience of Such Investor.....	15
3.8	Independent Investment Decision .....	15
3.9	No Public Market .....	15
ARTICLE IV	COVENANTS.....	15
4.1	Affirmative Covenants .....	15
4.2	Negative Covenants.....	18
4.3	Securities of LaunchTN and Approved Investor(s) .....	19
ARTICLE V	ADDITIONAL AGREEMENTS .....	19
5.1	Legends .....	19
5.2	Transfer of Securities .....	20
5.3	Expenses and Further Assurances .....	20
ARTICLE VI	MISCELLANEOUS.....	21
6.1	Termination .....	21
6.2	Survival .....	21
6.3	Amendment .....	21
6.4	Waiver of Conditions .....	21
6.5	Governing Law and Jury Waiver .....	22
6.6	Notices.....	22
6.7	Assignment.....	22
6.8	Severability.....	22
6.9	No Third Party Beneficiaries.....	23
6.10	Specific Performance .....	23
6.11	Interpretation .....	23

## **ARTICLE I PURCHASE AND CLOSING**

1.1 Purchase. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to issue and sell to the Investors, and the Investors agree to purchase from the Company, at the Closing, the Securities, for the aggregate purchase price set forth on Annex B (the “Purchase Price”).

1.2 Closing.

(a) On the terms and subject to the conditions set forth in this Agreement, the closing of the Purchase (the “Closing”) will take place at the location specified in Annex B, at the time and on the date set forth in Annex B or as soon as practicable thereafter. The time at and date on which the Closing occurs is referred to in this Agreement as the “Closing Date.”

(b) Subject to the fulfillment or waiver of the conditions to the Closing in Section 1.3 and Section 1.4, at the Closing, the Company will deliver the Securities to the Investors as evidenced by one or more certificates or other indications of ownership dated as of the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the Purchase Price by wire transfer of immediately available United States funds to a bank account designated by the Company on Annex B.

1.3 Investor Closing Conditions. The obligation of the Investors to consummate the Purchase is subject to the fulfillment (or waiver by the each of the Investors) at or prior to the Closing of each of the following conditions:

(a) No Prohibition by Law. No provision of any applicable United States or other Law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the Purchase.

(b) Representations and Warranties Accurate.

(i) The representations and warranties of the Company shall be true and correct on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct as of such other date); and

(ii) The Company shall have performed in all respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Delivery of Officer’s Certificate. The Company shall have delivered to the Investors a certificate signed on behalf of the Company by an Executive Officer certifying that the conditions set forth in Section 1.3(b) have been satisfied, such certificate to be in substantially the form of Annex H.

(d) Required Amendments to Organizational Documents. The Company shall have duly adopted and, to the extent required by Law, filed with the Secretary of State of its Jurisdiction of Organization or other applicable Governmental Entity, amendment(s) to its Organizational Documents, any such amendment(s) to be in substantially the form of the applicable Required Amendments to Organizational Documents, and the Company shall have delivered to the Investors, if a filing with the

Secretary of State of its Jurisdiction of Organization or other applicable Governmental Entity was required by Law, a copy of the filed Required Amendments to Organizational Documents with appropriate evidence from the Secretary of State or other applicable Governmental Entity that the filing has been accepted.

(e) Delivery of Organizational Documents. The Company shall have delivered to the Investors true, complete and correct certified copies of the Organizational Documents of the Company.

(f) Delivery of Legal Opinion. The Company shall have delivered to the Investors a written opinion from counsel to the Company (which may be internal counsel), addressed to LaunchTN and each of the Approved Investor(s) and dated as of the Closing Date, in substantially the form of Annex J.

(g) Delivery of Certificates. The Company shall have delivered certificates or other indications of ownership to the Investors evidencing the Securities purchased by each Investor dated as of the Closing Date and bearing appropriate legends as hereinafter provided for.

(h) Delivery of Disclosure Schedule. The Company shall have delivered to the Investors the Disclosure Schedule.

(i) Delivery of Financial Statements. The Company shall have delivered to the Investors the Company Financial Statements.

(j) Delivery of Investors' Rights Agreement. The Company shall have executed and delivered to the Investors an Investors' Rights Agreement in substantially the form attached hereto as Annex F.

(k) Required Consents. The Company shall have delivered to the Investors evidence of the required notices, applications, consents, approvals, waivers, orders, declarations, authorizations, qualifications, registrations, and filings set forth on Schedule 2.4(c), such evidence of the same to be acceptable to the Investors in their reasonable discretion.

1.4 LaunchTN Closing Condition(s). In addition to the conditions set forth in Section 1.3, the obligation of LaunchTN to consummate the Purchase is subject to (a) the execution and delivery by the Company and the Approved Investors of a Co-Investment Agreement in substantially the form attached hereto as Annex K and (b) LaunchTN's receipt of evidence, satisfactory to LaunchTN in its sole discretion, of the Approved Investor(s)' provision to the Company of the funds required to purchase that portion of the Securities to be acquired by the Approved Investor(s).

## **ARTICLE II COMPANY REPRESENTATIONS AND WARRANTIES**

The Company hereby represents and warrants to each Investor that, except as set forth on the Disclosure Schedule attached as Annex E to this Agreement, the following representations and warranties contain in this Article II are true and complete as of the Closing Date (except where such representations and warranties by their terms speak as of another date). Annex E contains the required form of Disclosure Schedule for each section and subsection of this Article II in which a schedule is permitted. The information provided in the Disclosure Schedule shall be deemed to be part of the representations and warranties made hereunder. A disclosure in any section or subsection of the Disclosure Schedule shall qualify other sections and subsections in this Article II only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

2.1 Organization, Authority and Subsidiaries. The Company is an entity duly organized, validly existing and in good standing under the laws of the Jurisdiction of Organization and in its Organizational Form, with all requisite power and authority to own, lease and operate its properties and assets and conduct its business as presently conducted and proposed to be conducted. The Company is duly qualified to do business as a foreign entity and is in good standing under the Laws of each other jurisdiction in which the ownership or lease by the Company of its properties or assets or the conduct by the Company of its business makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. Set forth on **Schedule 2.1** is a list of each Person which the Company owns or controls, directly or indirectly, or in which the Company otherwise has any direct or indirect equity ownership, participation or similar interest (each such Person a “Company Subsidiary” and all such Persons, collectively, the “Company Subsidiaries”). Each Company Subsidiary is duly organized, validly existing and in good standing under the laws or its jurisdiction of organization, has all requisite power and authority to own, lease and operate its properties and assets and conduct its business as presently conducted and proposed to be conducted and is duly qualified to do business as a foreign entity and is in good standing under the laws of each other jurisdiction in which the ownership or lease by the Company Subsidiary of its properties or assets or the conduct by the Company Subsidiary of its business makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company is not a participant in any joint venture, partnership or similar arrangement. Prior to the Closing Date, the Company has delivered or made available to the Investors true, correct and complete copies of the Organizational Documents of the Company as amended and in effect as of the Closing Date.

2.2 Capitalization.

(a) Set forth on **Schedule 2.2(a)** is a true, accurate and complete list, reflecting the following matters as they exist immediately prior to the Closing, of (i) all authorized securities of the Company and (ii) all issued and outstanding securities of the Company and the names of the respective record holders thereof. Except as set forth on **Schedule 2.2(a)**, there are no outstanding options, warrants, subscriptions or other agreements or rights entitling any Person to purchase, subscribe for or acquire, or that would obligate the Company to issue to any Person, any equity or other securities of the Company, nor are there outstanding any securities convertible into or exchangeable for other securities of the Company. All issued and outstanding securities of the Company have been duly authorized, are validly issued and outstanding and are fully paid and non-assessable. All securities of the Company have been offered, issued and sold in compliance with all applicable federal and state securities Laws.

(b) The Company has reserved adequate securities for issuance to officers, directors, members, managers, employees and consultants of the Company pursuant to equity compensation plans duly adopted and approved (the “Equity Compensation Plan(s)”). The Company has delivered or made available to the Investors true and complete copies of the Equity Compensation Plan(s) and forms of agreements used thereunder.

(c) Set forth on **Schedule 2.2(c)** is a true, accurate and complete list, reflecting the following matters as they will exist immediately following the Closing, of (i) all issued and outstanding securities of the Company, and (ii) all outstanding options, warrants, subscriptions or other agreements or rights entitling any Person to purchase, subscribe for or acquire, or that would obligate the Company to issue to any Person, any equity or other securities of the Company, as well as all outstanding securities convertible into or exchangeable for other securities of the Company. The Company has reserved sufficient securities for issuance pursuant to this Agreement.

(d) The Company has obtained valid waivers of any rights of other Persons to purchase any of the Securities covered by this Agreement.

2.3 Securities. The Securities have been duly and validly authorized, and, when issued and delivered pursuant to and in accordance with the terms of this Agreement for the consideration stated herein, the Securities will be duly and validly issued and fully paid and non-assessable. Except as set forth on **Schedule 2.3**, the Securities, when issued and delivered, shall be free of restrictions on transfer other than restrictions contained in this Agreement and under applicable state and federal securities Laws. The Company's issuance of the Securities to the Investors in accordance with the terms of this Agreement will not violate any preemptive or other rights of any Person. Any securities issuable upon the conversion of the Securities have been duly authorized and reserved for issuance, and upon issuance, will be validly issued, fully paid and nonassessable and free of restrictions on transfer, other than restrictions on transfer under this Agreement or the Ancillary Documents, applicable federal and state securities Laws and liens or encumbrances created by or imposed by an Investor.

2.4 Authorization and Enforceability.

(a) The Company has all requisite power and authority (corporate or otherwise) to execute and deliver this Agreement, and any and all other documents, instruments and agreements to which the Company is a party the execution and delivery of which is contemplated hereby (collectively, the "Ancillary Documents"), and to perform, carry out and consummate its obligations hereunder and the transactions contemplated hereby, including without limitation the issuance of the Securities. The execution, delivery and performance by the Company of this Agreement and the Ancillary Documents and the consummation by the Company of the transactions contemplated by this Agreement and the Ancillary Documents have been duly and validly authorized by all necessary corporate or other action on the part of the Company and its officers, directors, managers, Equity Holders and other constituents, as applicable, and no further approval or authorization is required on the part of the Company. This Agreement has been duly and validly executed and delivered by the Company, and each of the Ancillary Documents has been or will be, as appropriate, duly and validly executed by the Company. This Agreement and, when executed and delivered by the Company, the Ancillary Documents constitute or will constitute, as appropriate, legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally or general equitable principles (the "Enforceability Exceptions").

(b) Neither the Company's execution, delivery or performance of this Agreement or any of the Ancillary Documents nor the Company's consummation of the transactions contemplated hereby or thereby will (i) with or without notice or lapse of time or both, violate, conflict with or result in a breach of, constitute a default under, result in the termination of, accelerate the performance required by or under, result in a right of termination or acceleration of or under or result in the creation of any Encumbrance upon any of the properties or assets of the Company under, any of the terms, conditions or provisions of (A) the Company's Organizational Documents or (B) any agreement, contract, commitment, promise, understanding, note, mortgage, indenture, deed of trust, license, lease or other instrument or obligation to which the Company is a party, by which the Company may be bound or to which the Company or any of its properties or assets may be subject, or (ii) violate any Law applicable to the Company or by or to which the Company or any of its properties or assets may be bound or subject, except, in the case of clauses (i)(B) and (ii), for those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(c) Except as set forth on **Schedule 2.4(c)**, no notice or application to, consent, approval, waiver, order, declaration or authorization of or qualification, registration or filing with any Governmental Entity or other Person is required to be given, made or obtained by the Company in connection with, or is otherwise required for, the Company's execution, delivery and performance of this Agreement or the Ancillary Documents or the consummation by the Company of the transactions contemplated hereby or thereby.

2.5 Qualified Business Requirements. The Company (a) is not Publicly-Traded, (b) is headquartered in, and its principal business operations are located in, the State of Tennessee, (c) as of the Closing Date, has less than 500 employees, and sixty percent (60%) or more of the employees of the Company provide services in Tennessee to the Company, (d) is not engaged in a business involving (i) real estate or real estate development or leasing, (ii) insurance, banking or lending, (iii) professional services provided by a lawyer, accountant, registered investment advisor or physician, (iv) oil and gas exploration or mining, (v) gambling enterprises (unless the Company earns less than thirty-three percent (33%) of its annual net revenue from lottery sales), (vi) construction, (vii) the production or distribution of motion pictures, television shows or sound recordings, (viii) pyramid sales, where the participant's primary incentive is based on the sales made by an ever-increasing number of participants, (ix) accommodation and food services establishments or (x) retail establishments (except where the primary purpose is the development or support of electronic commerce using the Internet), (e) is not engaged in any activity prohibited by applicable Law, including without limitation the production, servicing or distribution of otherwise legal goods or products that are to be used in connection with an illegal activity, (f) is not engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless such activities are incidental to the regular activities of the Company and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Company, and (g) is not a charitable, religious or other not-for-profit institution, government-owned corporation, consumer or marketing cooperative or church or other organization promoting religious objectives.

2.6 Anti-Takeover Provisions. The Company has taken all necessary action to ensure that the transactions contemplated by this Agreement, and the consummation thereof, will be exempt from any anti-takeover or similar provisions of the Company's Organizational Documents and any other provisions of any applicable "moratorium," "control share," "fair price," "interested stockholder" or other anti-takeover Laws of any jurisdiction.

2.7 No Company Material Adverse Effect. Except as set forth on **Schedule 2.7**, since the Application Date, there has been no Company Material Adverse Effect.

2.8 Company Financial Statements. The Company has previously delivered or made available to the Investors true, accurate and complete copies of the Company Financial Statements. The Company Financial Statements (a) have been prepared on a consistent basis throughout the periods indicated and (b) have been prepared from and are consistent with the books and records of the Company and the Company Subsidiaries. The Company Financial Statements fairly present in all material respects the consolidated financial position and results of operations of the Company and its consolidated Company Subsidiaries as of the dates and for the periods indicated therein, subject, in the case of unaudited Company Financial Statements, to normal year-end adjustments none of which, individually or in the aggregate, will be material.

2.9 No Undisclosed Liabilities. Neither the Company nor any Company Subsidiary has any liabilities or obligations of any nature whatsoever, whether known, unknown, absolute, accrued, contingent or otherwise, whether direct or indirect, whether as a guarantor or otherwise with respect to any liability or obligation of any Person, and whether due or to become due (collectively, "Liabilities") or

singularly, a “Liability”), except (a) as disclosed or adequately reserved against in the Company Financial Statements, (b) Liabilities incurred in the ordinary course of business since the Application Date and (c) Liabilities under contracts and commitments incurred in the ordinary course of business, which, in the case of Liabilities described in clause (b) or (c), individually or in the aggregate, are not material to the financial condition or operating results of the Company or any Company Subsidiary.

2.10 Offering of Securities. Subject to the truth and accuracy of each Investor’s representations set forth in this Agreement, the offer, sale and issuance of the Securities as contemplated by this Agreement are exempt from the registration requirements of the Securities Act. Neither the Company nor any Person acting on its behalf has taken any action (including any offering of any securities of the Company under circumstances which would require the integration of such offering with the offering of any of the Securities under the Securities Act and the rules and regulations of the United States Securities and Exchange Commission (the “SEC”) promulgated thereunder), which might subject the offering, sale or issuance of any of the Securities to the Investors pursuant to this Agreement to the registration requirements of the Securities Act.

2.11 Litigation. Except as set forth on **Schedule 2.11**, there is no claim, dispute, notice, order, appeal, investigation, litigation, action, suit, arbitration, mediation or other proceeding, at law or in equity (each a “Proceeding”), pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary, or involving or affecting any of the properties or assets of the Company or any Company Subsidiary, by or before any Governmental Entity or other Person. To the Knowledge of the Company, there are no facts, circumstances or conditions which could be expected to result in any Proceeding against the Company or any Company Subsidiary or involving or affecting any of the properties or assets of the Company or any Company Subsidiary. The Company is not a party to, named in or subject to any notice, writ, decree, injunction, order, judgment or similar action issued or taken by a Governmental Entity or other Person (each an “Order”), nor is the Company in default with respect to or in violation of any Order.

2.12 Permits. The Company and the Company Subsidiaries have all permits, licenses, franchises, certificates, authorizations, consents, orders and approvals (collectively, “Permits”) of or from, and have made all filings, applications and registrations with, all Governmental Entities and other Persons necessary for the conduct of their respective businesses as presently conducted and the ownership, lease, operation and use of their respective properties and assets. All of the Permits have been validly issued and acquired and are in full force and effect, and neither the Company nor any Company Subsidiary (a) is in violation of or breach or default under any Permit or (b) has received notice from any Governmental Entity or other Person that such Governmental Entity or other Person intends to cancel, revoke, terminate, suspend or not renew any Permit.

2.13 Contracts and Commitments. Each of the Material Contracts is in full force and effect, constitutes the valid and legally binding obligation of the Company and, to the Knowledge of the Company, each of the other parties thereto, and is enforceable against the Company and, to the Knowledge of the Company, each of the other parties thereto in accordance with its terms, subject to the Enforceability Exceptions. The Company is in material compliance with the terms and provisions of each Material Contract and is not in material breach of or default under any Material Contract. To the Knowledge of the Company, each party other than the Company to any Material Contract is in material compliance with, and is not in material breach of or default under, the terms and provisions of such Material Contract. To the Knowledge of the Company, no circumstance or condition exists, and no event has occurred (or failed to occur), which, alone or with the giving of notice, the lapse of time, or both, would constitute a default by the Company or any other Person under, or would give rise to any claim of non-performance under, any Material Contract. The Company has not given or received any notice or other correspondence (whether oral or written) of or with respect to any actual, alleged, threatened or

potential violation, repudiation, claim, breach, dispute or default of or under any Material Contract. The Company has not made, given or received, either orally or in writing, any notice or threat of non-renewal or termination with respect to any Material Contract.

2.14 Compliance with Laws. Except as set forth on **Schedule 2.14**, (a) the Company and the Company Subsidiaries have complied in all material respects with and are not in material default or violation of, (b) to the Knowledge of the Company, neither the Company nor any Company Subsidiary is under investigation with respect to or has been threatened to be charged or cited with any violation of and (c) neither the Company nor any Company Subsidiary has been given notice of or cited for any actual or alleged material violation of, any domestic (whether federal, state or local) or foreign law, constitution, statute, code, ordinance, license, rule, regulation, policy, guideline, order, demand, writ, injunction, decree or judgment (each a “Law” or collectively, “Laws”) applicable to or binding on the Company or any Company Subsidiary.

2.15 Employment Matters.

(a) Set forth on **Schedule 2.15(a)** is a detailed description of all compensation, including salary, bonus, severance obligations and deferred compensation paid or payable for each Executive Officer, employee, consultant and independent contractor of the Company.

(b) To the Knowledge of the Company, none of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any Order, that would materially interfere with such employee’s ability to promote the interest of the Company or that would conflict with the Company’s business. Neither the execution or delivery of this Agreement or the Ancillary Documents, nor the carrying on of the Company’s business by the employees of the Company, nor the conduct of the Company’s business as now conducted and as presently proposed to be conducted, will, to the Knowledge of the Company, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee is now obligated.

(c) The Company is not delinquent in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it to the date hereof or amounts required to be reimbursed to such employees, consultants, or independent contractors. The Company has complied in all material respects with all Laws related to employment. The Company has withheld and paid to the appropriate Governmental Entity or is holding for payment not yet due to such Governmental Entity all amounts required to be withheld from employees of the Company and is not liable for any arrears of wages, taxes, penalties, or other sums for failure to comply with any of the foregoing.

(d) To the Knowledge of the Company, no Executive Officer or other key employee intends to terminate employment with the Company or is otherwise likely to become unavailable to continue as an employee, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each employee of the Company is terminable at the will of the Company. Except as set forth in **Schedule 2.15(d)** or as required by Law, upon termination of the employment of any such employees, no severance or other payments will become due. Except as set forth in **Schedule 2.15(d)**, the Company has no policy, practice, plan, or program of paying severance pay or any form of severance compensation in connection with the termination of employment services.

(e) The Company has not made any representations regarding equity incentives to any Executive Officer, employee, director or consultant that are inconsistent with the terms set forth in the minutes books of the Company.

(f) Set forth on **Schedule 2.15(f)** is a true, accurate and complete list of each employee benefit plan subject to ERISA maintained, established or sponsored by the Company, or which the Company participates in or contributes to. The Company has made all required contributions and has no liability to any such employee benefit plan, other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, and has complied in all material respects with all applicable Laws for any such employee benefit plan.

(g) The Company is not bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Knowledge of the Company, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Knowledge of the Company, threatened, which could have a Company Material Adverse Effect, nor is the Company aware of any labor organization activity involving its employees.

(h) To the Knowledge of the Company, none of the key employees, Executive Officers, or directors of the Company has been (i) subject to voluntary or involuntary petition under the federal bankruptcy Laws or any state insolvency Law or the appointment of a receiver, fiscal agent or similar officer by a court for his or her business or property; (ii) convicted in a criminal proceeding or named as a subject of a pending criminal proceeding (excluding traffic violations and other minor offenses); (iii) subject to any order, judgment, or decree (not subsequently reversed, suspended, or vacated) of any court of competent jurisdiction permanently or temporarily enjoining him or her from engaging, or otherwise imposing limits or conditions on his or her engagement in any securities, investment advisory, banking, insurance, or other type of business or acting as an officer or director of a public company; or (iv) found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission to have violated any federal or states securities, commodities, or unfair trade practices Law, which such judgment or finding has not been subsequently reversed, suspended, or vacated.

2.16 **Taxes.** The Company and the Company Subsidiaries have timely filed all Tax Returns with respect to any Tax required to be filed by them on or before the Closing Date. All such Tax Returns were true, complete and correct in all material respects and were prepared in compliance with all applicable Laws, and all Taxes shown to be due and payable on such Tax Returns have been paid. The Company and the Company Subsidiaries have established adequate reserves for the payment of all Taxes not yet due and payable, which reserves are adequate to cover all Taxes accruing on or before the Closing Date. All Taxes that the Company or the Company Subsidiaries are required by Law to withhold or collect have been duly withheld or collected and have been timely paid over to the appropriate Governmental Entity to the extent due and payable. There is no Proceeding or assessment by any Governmental Entity pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary for any cited or alleged deficiency in Taxes. Neither the Company nor any Company Subsidiary has executed a waiver or consent extending any statute of limitations for the assessment or collection of any Taxes that remains outstanding, applied for a ruling relative to Taxes or entered into a closing agreement with any Governmental Entity with respect to any Taxes. To the Knowledge of Company, none of the Tax Returns of the Company or any Company Subsidiary have been or are currently being examined by the IRS or any other Governmental Entity. There is no examination or other Proceeding relating to Taxes in progress or pending of which the Company or any Company Subsidiary has received oral or written notice. Except as set forth on **Schedule 2.16**, neither the Company nor any Company Subsidiary is a party to any agreement or arrangement providing for the allocation or sharing of Taxes, and neither the Company nor any Company Subsidiary is liable for the Taxes of any other Person (except for Tax liabilities of any member of a consolidated group of which the Company or any Company Subsidiary is the common parent). No payment made by the Company or any Company

Subsidiary on or prior to the Closing Date, or by reason of the transactions contemplated by this Agreement or any of the Ancillary Documents, constitutes or will constitute an “excess parachute payment” within the meaning of Section 280G of the Code.

2.17 Title to Assets. The Company and the Company Subsidiaries have good, valid and marketable title to, or valid leasehold interests in, all tangible and intangible properties and assets, real, personal and mixed, purported to be owned or leased by the Company or the Company Subsidiaries or used or held for use in the business of the Company or the Company Subsidiaries, free and clear of any and all Encumbrances other than the Permitted Encumbrances. Such properties and assets (a) are, taken as a whole, sufficient for the operations of the Company and the Company Subsidiaries as currently conducted and as proposed to be conducted, (b) are suitable for the purposes for which they are currently used or are held for use, (c) are in good repair and operating condition, taking into account age and ordinary wear and tear, and (d) have been maintained in accordance with normal practice within the Company’s industry. To the Knowledge of the Company, there are no facts, circumstances or conditions that exist which could, individually or in the aggregate, interfere with the use, occupancy or operation of such properties or assets as such properties and assets are currently used, occupied or operated, or their suitability for such use, occupation or operation. The Company and the Company Subsidiaries hold all properties and assets leased by them under valid and enforceable leases, free and clear of any and all Encumbrances other than the Permitted Encumbrances, and the Company and the Company Subsidiaries are in compliance in all material respects with, and not in material breach or violation of or default under, any of such leases.

2.18 Environmental Matters. The Company is not in violation of and has at all times operated in compliance with all Environmental Laws, except where any violations of or non-compliance with such Environmental Laws would not, individually or in the aggregate, have a Company Material Adverse Effect. To the Knowledge of the Company, there is no physical condition existing on any property now or previously owned, leased, operated or occupied by the Company, nor are there any physical conditions existing on any other property that may have been impacted by the operations of the Company, which could give rise to any liability or remedial obligation on the part of the Company under any Environmental Laws. The Company has not received any notice of any investigation, claim or other Proceeding against or involving the Company of or by any Governmental Entity or other Person relating to any Environmental Laws, and, to the Knowledge of the Company, there is no fact or circumstance that could involve the Company in any Proceeding, or that could result in the imposition of any liability upon the Company, under, arising out of or related to any Environmental Laws. The Company has all Permits required by the Environmental Laws for the use and occupancy of, and for all operations and activities conducted on, any properties owned, leased, operated or occupied by the Company, and the Company is in material compliance with all such Permits. All such Permits were duly issued, are in full force and effect and will remain in full force and effect as of and after the Closing Date.

2.19 Intellectual Property. Set forth on **Schedule 2.19** is a true, accurate and complete list of (a) all patents, registered and unregistered trademarks, service marks, logos, domain names, corporate and trade names and registered and common law copyrights, and all applications for any of the foregoing, which are owned by or licensed to the Company or are otherwise used by the Company in its business (together with all other proprietary information that is used by the Company in the conduct of its business, the “Intellectual Property”), (b) all licenses or other agreements under which any Person has the right to use any Intellectual Property owned by the Company, (c) all licenses or other agreements under which the Company has the right to use any Intellectual Property owned by others and (d) all corporate and fictitious names used by the Company in the past five years (including the corporate names of any businesses that have been acquired by the Company during such time period). The Company owns or possesses or believes that it can acquire on commercially reasonable terms sufficient legal rights to all of the Intellectual Property without any known conflict with, or infringement of, the rights of other Persons.

To the Knowledge of the Company, no product or service marketed or sold (or proposed to be marketed or sold) by the Company violates or will violate any license or infringes or will infringe any intellectual property rights of any other Person. Other than with respect to commercially available software products under standard end-user object code license agreements, there are no outstanding options, licenses, agreements, claims, encumbrances or shared ownership interests of any kind relating to the Intellectual Property, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights or processes of any other Person. The Company has not received any communications alleging that the Company has violated or, by conducting its business, would violate any of the patents, trademarks, service marks, trade names, copyrights, trade secrets, mask works or other proprietary rights or processes of any other Person. The Company has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that it owns or leases or that it has otherwise provided to its employees for their use in connection with the Company's business. To the Knowledge of the Company, it will not be necessary to use any inventions of any of its employees or consultants (or Persons it currently intends to hire) made prior to their employment by the Company. Each such employee and consultant has assigned to the Company all intellectual property rights he or she owns that are related to the Company's business as now conducted and as presently proposed to be conducted. The Company has not embedded any open source, copyleft or community source code in any of its products generally available or in development, including without limitation any libraries or code licensed under any general public license, lesser general public license or similar license arrangement. For purposes of this Section 2.19, Knowledge of the Company of a patent right shall be deemed to exist if the Company has actual knowledge of the patent right or would be found to be on notice of such patent right as determined by reference to United States patent Laws.

2.20 Books and Records. The books of account, minute books and securities record books of the Company, all of which have been furnished or made available to the Investors or their representatives, are complete and correct and have been maintained in accordance with sound business and accounting practices. The minute books of the Company as delivered or made available to the Investors or their representatives contain accurate and complete summaries of all meetings of, and all corporate or other action taken by, the board of directors (or other similar governing body), committees of the board of directors (or other similar governing body), shareholders, members, managers and/or partners, as applicable, of the Company, and no meeting of the board of directors (or other similar governing body), any committee of the board of directors (or other similar governing body), shareholders, members, managers and/or partners, as applicable, of the Company has been held where material matters were approved or voted or acted upon for which minutes have not been prepared or are not contained in such minute books.

2.21 Related Party Transactions. Except as set forth on Schedule 2.21, no officer, director, member, manager, partner or Equity Holder of the Company, or any member of the immediate family of any such Person (each a "Related Party" and, collectively, the "Related Parties"), is indebted to the Company, nor is the Company indebted to, or committed to make any loan or extension of credit to or guarantee the indebtedness of, any Related Party, other than for (i) salaries and other compensation payable for services rendered, (ii) reimbursement of reasonable expenses incurred on behalf of the Company not in excess of \$5,000 in the aggregate and (iii) standard employee benefits made generally available to all Company employees consistent with past practices (including stock option agreements and grants outstanding under any stock option plan duly and validly approved by all requisite corporate or other action on the part of the Company).

2.22 Insurance. The Company has in full force and effect fire, casualty and other insurance policies with extended coverage, sufficient in amount (subject to reasonable deductions) to allow it to replace any of its properties or assets that might be damaged or destroyed.

2.23 Dividends and Other Transactions.

(a) The Company has not declared or authorized any dividend or other distribution upon or with respect to any class or series of its securities, which has not been paid or issued.

(b) The Company has not engaged in the past three months in discussions with any other Person regarding (i) any sale, transfer, lease or exclusive license of all or substantially all of the properties or assets of the Company, or (ii) any merger, consolidation or other business combination transaction involving the Company.

2.24 Certain Payments. Neither the Company nor any officer, director, employee, manager, or holder of any equity securities of the Company, or any other Person associated with or acting for or on behalf of the Company, has directly or indirectly used any funds of the Company to (a) make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services, (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or for special concessions already obtained for or in respect of the Company or any Affiliate of the Company or (iv) in violation of any Law, or (b) establish or maintain any fund or asset that has not been recorded in the books and records of the Company.

2.25 Registration Rights. Except as provided in Annex F to this Agreement, the Company has no obligation, and has not granted to any Person any rights, to register or cause the registration of any presently outstanding securities of the Company, or any securities of the Company that may be subsequently issued, under the Securities Act.

2.26 Section 83(b) Elections. To the Knowledge of Company, all Persons who have purchased Company securities under agreements or arrangements that provide for the vesting of such securities have filed timely elections under Section 83(b) of the Code and any analogous provisions of applicable state Laws.

2.27 Small Business Concerns. If one or more Approved Investor(s) is a small business investment company within the meaning of the Small Business Investment Act of 1958, as amended (the “SBIA”), the Company, together with its “affiliates” (as such term is defined in 13 C.F.R. 121.103), is a “small business concern” within the meaning of the SBIA, and the regulations promulgated thereunder. The Company acknowledges that each Investor that is a small business investment company is a Federal licensee under the SBIA.

2.28 Disclosure. Neither this Agreement nor any other document, agreement, written statement or certificate made or delivered by the Company in connection herewith (including without limitation the Ancillary Documents) contains any untrue statement of material fact or omits to state any material fact necessary in order to make the statements herein or therein not misleading.

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

Each Investor, severally for itself and for no other Investor, hereby represents and warrants to the Company as follows:

3.1 Authorization. If the Investor is an entity, it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, with the requisite corporate or other power and authority to enter into this Agreement and otherwise to carry out its obligations hereunder. If

the Investor is an entity, the execution, delivery and performance by each Investor of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or other applicable action on the part of each Investor. This Agreement has been duly executed by the Investor, and when delivered by each Investor in accordance with the terms hereof, will constitute the valid and legally binding obligation of each Investor, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

3.2 Purchase Entirely for Own Account. The Investor hereby confirms that the Securities to be acquired by the Investor will be acquired for investment for the Investor's own account and not with a view to the resale or distribution of any part thereof, and that the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Investor further represents that the Investor does not presently have any contract, undertaking, agreement or arrangement to sell, transfer or grant participations, with respect to any of the Securities. The Investor has not been formed for the specific purpose of acquiring the Securities. Notwithstanding the foregoing, it is understood by the Parties that the Investor may transfer all or any portion of the Securities to any of its Affiliates or grant such Affiliates participation rights therein; *provided* that any such Affiliates agree to be bound by the relevant terms and conditions of this Agreement.

3.3 Disclosure of Information. The Investor has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Securities with the Company's management and has had an opportunity to review the Company's facilities. The foregoing, however, does not limit or modify the representations and warranties of the Company in Article II of this Agreement or the right of the Investors to rely thereon. The Investor believes that it has received all the information such Investor considers necessary or appropriate for deciding whether to purchase the Securities. The Investor has received all of the information it has requested of the Company. The Investor also acknowledges that it is relying solely on its own counsel and not on any statements or representations of the Company or its agents for legal advice with respect to this investment or the transactions contemplated by the Agreement to which such Investor is a party.

3.4 No Conflicts. The execution, delivery and performance by the Investor of this Agreement and the consummation by the Investor of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of the Investor (if the Investor is an entity), (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would constitute a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Investor is a party, or (iii) result in a violation of any Law applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

3.5 Investment Intent. The Investor understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities Law and is acquiring the Securities as principal for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities Laws: *provided* that by making the representations herein, other than as set forth herein, such Investor does not agree to hold any of the Securities for any minimum period of time and reserves the right at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable federal and state securities Laws. The Investor does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any Person or entity.

3.6 Investor Status. At the time such Investor was offered the Securities, it was, and at the date hereof it is, an “accredited investor” as defined in Rule 501(a) under the Securities Act.

3.7 Experience of Such Investor. The Investor, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Investor is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

3.8 Independent Investment Decision. The Investor has independently evaluated the merits of its decision to purchase Securities pursuant to the Agreement, and the Investor confirms that it has not relied on the advice of any other Investor’s business and/or legal counsel in making such decision. The Investor understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Investor in connection with the purchase of the Securities constitutes legal, regulatory, tax or investment advice. Such Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

3.9 No Public Market. The Investor understands that no public market now exists for the Securities, and that the Company has made no assurances that a public market will ever exist for the Securities.

## **ARTICLE IV COVENANTS**

4.1 Affirmative Covenants. The Company hereby covenants and agrees with the Investors that:

(a) Access, Information and Confidentiality.

(i) The Company will permit, and shall cause each of the Company’s Subsidiaries to permit, the Investors, and/or the consultants, contractors and advisors of the Investors to (x) examine any books, papers, records, Tax returns (including all schedules attached thereto), data and other information, and make copies thereof, and (y) discuss the affairs, finances and accounts of the Company and the Company Subsidiaries with the personnel of the Company and the Company Subsidiaries, all upon reasonable request and notice; *provided*, that:

(A) any examinations and discussions pursuant to this Section 4.1(a)(i) shall be conducted during normal business hours and in such manner as not to interfere unreasonably with the conduct of the business of the Company; and

(B) the Company shall not be required by this Section 4.1(a)(i) to disclose any information to the extent (x) prohibited by applicable Law, or (y) that such disclosure would reasonably be expected to cause a violation of any agreement to which the Company is a party or would cause a risk of a loss of privilege to the Company (provided that the Company shall use commercially reasonable efforts to make appropriate substitute and/or redacted disclosure arrangements under circumstances where the restrictions in this clause (B) apply).

(ii) From the Effective Date until such time as LaunchTN no longer holds an interest in the Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged), the Company will deliver, or will cause to be delivered, to the Investors:

(A) within 45 days after the end of each calendar year, an Annual Report and Certification in substantially the form attached hereto as Annex I, signed on behalf of the Company by an Executive Officer; *provided, however*, that LaunchTN shall have the right to modify Annex I from time to time to (1) reflect changes in applicable Law or (2) make such clarifications and/or technical corrections thereto as LaunchTN determines to be reasonably necessary;

(B) prompt written notice of any of the following:

(1) the incurrence by the Company or any of its Affiliates of any new indebtedness in an aggregate amount in excess of \$1 million;

(2) any offering or sale of securities of the Company in an aggregate amount in excess of \$1 million;

(3) the dissolution, bankruptcy (whether voluntary or involuntary), or adjudication of insolvency of the Company or any of its Affiliates;

(4) In the event the president or chief executive officer (or other similarly situated, highest-ranking officer or executive) of the Company is convicted of or pleads guilty or *nolo contendere* to any felony;

(5) In the event the Company is convicted of or pleads guilty or *nolo contendere* to, or is imposed or incurs any fine or penalty as a result of, any criminal offense; or

(6) In the event the Company at any time operates as a charitable, religious or other not-for-profit institution, government-owned corporation, consumer or marketing cooperative or church or other organization promoting religious objectives.

(C) as soon as such items become effective, any amendments to the Organizational Documents of the Company; and

(D) at the same time as such items are sent to any other Equity Holders of the Company, copies of any information or documents sent by the Company to its other Equity Holders.

(iii) Each Investor will use its reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, "Information") concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Agreement (except to the extent that such Information can be shown to have been (A) previously known by such Investor on a non-confidential basis, (B) in the public domain through no fault of such Investor, or (C) later lawfully acquired from other sources by such Investor to which it was furnished (and without violation of any other confidentiality obligation), or (D) as otherwise to maintain compliance with the Program Guidelines, conditions of participation in or compliance with reporting requirements of the Fund); provided that nothing herein shall prevent any Investor from disclosing any Information to the extent required by applicable Laws or by any subpoena or similar legal process. LaunchTN understands that the Information may contain commercially sensitive confidential information entitled to an exception from a Freedom of Information Act request.

(iv) LaunchTN's information rights pursuant to Section 4.1(a)(ii) may be assigned by LaunchTN to a transferee or assignee of the Securities.

(v) The Company shall provide to LaunchTN all such information as LaunchTN may request from time to time for the purpose of carrying out any reporting requirements associated with the Fund.

(b) INCITE Fund Program Guidelines. The Company covenants that, unless otherwise agreed to by LaunchTN in writing, during the 12-month period immediately following and beginning on the day after the Closing Date (or until such earlier time as LaunchTN no longer holds an interest in the Securities or any securities into which the Securities are converted or for which the Securities are exchanged), at least sixty percent (60%) of all employees of the Company will provide services in Tennessee to the Company. For so long as LaunchTN holds an interest in the Securities (or any securities into which the Securities are converted or for which the Securities are exchanged), the Company covenants that (a) it shall be headquartered and maintain its principal business operations in the State of Tennessee, (b) it shall not engage in any business involving (i) real estate or real estate development or leasing, (ii) insurance, banking or lending, (iii) professional services provided by a lawyer, accountant, registered investment advisor or physician, (iv) oil and gas exploration or mining, (v) gambling enterprises, provided that the Company shall be permitted to earn less than thirty-three percent (33%) of its annual net revenue from lottery sales, (vi) construction, (vii) the production or distribution of motion pictures, television shows or sound recordings, (viii) pyramid sales, where the participant's primary incentive is based on the sales made by an ever-increasing number of participants, (ix) accommodation and food services establishments or (ix) retail establishments (except where the primary purpose is the development or support of electronic commerce using the Internet), (c) it shall not engage in any activity prohibited by applicable Law, including without limitation the production, servicing or distribution of otherwise legal goods or products that are to be used in connection with an illegal activity, (d) it shall not engage in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless such activities are incidental to the regular activities of the Company and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the Company, and (e) it shall not operate as a charitable, religious or other not-for-profit institution, government-owned corporation, consumer or marketing cooperative or church or other organization promoting religious objectives.

(c) LaunchTN Put Rights.

(i) Upon the occurrence of any of the following, LaunchTN shall have the right and option to require the Company to redeem or repurchase the Securities held by LaunchTN (the "Put Right") by providing the Company with written notice (the "Put Notice") of its intent to exercise the Put Right:

(A) In the event the president or chief executive officer (or other similarly situated, highest-ranking officer or executive) of the Company is convicted of or pleads guilty or *nolo contendere* to any felony;

(B) In the event the Company is convicted of or pleads guilty or *nolo contendere* to, or is imposed or incurs any fine or penalty as a result of, any criminal offense;

(C) In the event that, at any time during the 12-month period immediately following and beginning on the day after the Closing Date, at least sixty percent (60%) of all

employees of the Company do not provide services in Tennessee to the Company, unless otherwise agreed to by LaunchTN in writing; or

(D) In the event the Company at any time operates as a charitable, religious or other not-for-profit institution, government-owned corporation, consumer or marketing cooperative or church or other organization promoting religious objectives.

LaunchTN and the Company agree that the price to be paid for the Securities subject to the Put Right shall be an amount equal to the fair value of such Securities as of the date of the Put Notice as determined by an independent appraiser mutually agreed upon by LaunchTN and the Company. All costs and expenses of the appraiser or otherwise relating to the valuation of such Securities shall be borne by the Company. The closing of the purchase by the Company and sale by LaunchTN of the Securities subject to the Put Right shall occur at the offices of the Company on such date as is mutually agreed upon by LaunchTN and the Company, such date to be no later than 30 days after the date on which the independent appraiser delivers its valuation of such Securities to LaunchTN and the Company.

(ii) In addition to the rights granted to LaunchTN in Section 4.1(c)(i) above, LaunchTN shall have the right and option to, at any time, with or without cause, require the Company to redeem or repurchase the Securities held by LaunchTN (the “Discretionary Put Right”) by providing the Company with written notice (the “Discretionary Put Notice”) of its intent to exercise the Discretionary Put Right. LaunchTN and the Company agree that the aggregate price to be paid for all of the Securities subject to the Discretionary Put Right shall be \$1.00, and that the closing of the purchase by the Company and sale by LaunchTN of the Securities subject to the Discretionary Put Right shall occur at the offices of the Company on such date as is mutually agreed upon by LaunchTN and the Company, such date to be no later than 10 days after the date of the Discretionary Put Notice.

4.2 Negative Covenants. The Company hereby covenants and agrees with the Investors that:

(a) Certain Transactions.

(i) Until such time as LaunchTN no longer holds an interest in the Securities (or any securities into which the Securities are converted or for which the Securities are exchanged), the Company shall not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Agreement to be performed and observed by the Company; provided, however, that this Section 4.2(a)(i) shall not operate to prohibit the consummation by the Company of a transaction in or as a result of which LaunchTN receives cash or Marketable Securities in exchange for all of the Securities (and all securities, if any, into which the Securities are or have been converted or for which the Securities are or have been exchanged) owned by LaunchTN. For purposes of this Section 4.2(a)(i), the term “Marketable Securities” shall mean equity securities that have a “readily determinable fair value,” as defined by the Financial Accounting Standards Board Accounting Standards Codification, as amended.

(ii) Without the prior written consent of LaunchTN, until such time as LaunchTN no longer holds an interest in the Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged), the Company shall not permit any of its “significant subsidiaries” (as such term is defined in Rule 12b-2 promulgated under the Exchange Act) to (A) engage in any merger, consolidation, statutory share exchange or similar transaction, unless the same does not and will not, directly or indirectly, constitute or result in the sale or other disposition of all or substantially all of the assets of the Company, (B) dissolve or sell all or substantially all of its assets or

property other than in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Company, unless such dissolution or sale of assets or property does not and will not, directly or indirectly, constitute or result in the sale or other disposition of all or substantially all of the assets of the Company, or (C) issue or sell any shares of its capital stock or any securities convertible or exercisable for any such shares, other than issuances or sales in connection with an internal reorganization or consolidation involving wholly-owned subsidiaries of the Company, unless the significant subsidiary is, after the issuance or sale of such capital stock or securities, majority-owned by the Company on a fully diluted basis or the issuance or sale of such capital stock or securities does not and will not, directly or indirectly, constitute or result in the sale or other disposition of all or substantially all of the assets of the Company.

(b) Restriction on Dividends and Repurchases. The Company covenants and agrees that it shall not violate any of the restrictions on dividends, distributions, redemptions, repurchases, acquisitions and related actions set forth in the Required Amendments to Organizational Documents, which are incorporated by reference herein as if set forth in full.

(c) Related Party Transactions. Until such time as LaunchTN no longer holds an interest in the Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged), the Company and the Company Subsidiaries shall not enter into transactions with Affiliates or “related persons” (within the meaning of Item 404 under the SEC’s Regulation S-K) unless such transactions are on terms no less favorable to the Company and the Company Subsidiaries than could be obtained from an unaffiliated third party.

4.3 Securities of LaunchTN and Approved Investor(s). The Company and each of the Approved Investor(s) understand, agree and acknowledge that, except as expressly otherwise provided in this Agreement, the Securities issued to LaunchTN under this Agreement shall be issued on the same terms and shall have, in all respects, the same preferences, rights and limitations, including without limitation any rights with respect to the disposition of such Securities, as the Securities issued to the Approved Investor(s).

## **ARTICLE V ADDITIONAL AGREEMENTS**

### 5.1 Legends.

(a) The Investors agree that all certificates or other instruments representing the Securities will bear a legend substantially to the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER SUCH ACT AND APPLICABLE LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT THE SHARES ARE EXEMPT FROM SUCH REGISTRATION REQUIREMENTS.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE PURCHASER, A COPY OF WHICH IS ON FILE WITH THE COMPANY. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR

OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.”

(b) In the event that any Securities (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company shall issue new certificates or other instruments representing such Securities, which shall not contain the applicable legends in Section 5.1(a); provided that the Investors surrender to the Company the previously issued certificates or other instruments.

5.2 Transfer of Securities. Subject to compliance with applicable securities Laws, the Investors shall be permitted to transfer, sell, assign or otherwise dispose of (“Transfer”) all or a portion of the Securities at any time, and the Company shall take all steps as may be reasonably requested by the Investors to facilitate the Transfer of the Securities, including without limitation, as set forth in this Agreement. In furtherance of the foregoing, the Company shall provide reasonable cooperation to facilitate any Transfer of the Securities, including, as is reasonable under the circumstances, by furnishing such information concerning the Company and its business as a proposed transferee may reasonably request and making management of the Company reasonably available to respond to questions of a proposed transferee in accordance with customary practice, subject in all cases to the proposed transferee agreeing to a customary confidentiality agreement.

5.3 Expenses and Further Assurances.

(a) Unless otherwise provided in this Agreement, each of the Parties will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated by this Agreement, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

(b) The Company shall, at the Company’s sole cost and expense, (i) furnish or deliver to the Investors all instruments, documents and other agreements required to be furnished or delivered by the Company pursuant to the terms of this Agreement, or which are reasonably requested by the Investors in connection therewith; (ii) execute and deliver to the Investors such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the Securities purchased by the Investors, all as the Investors may reasonably require; and (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement, all as the Investors may reasonably require from time to time.

(c) Each Party shall be responsible for and pay to any finder or broker employed, engaged, or retained by such Party (or its officers, directors, members, managers, partners, Equity Holders, or representatives) any finder’s or broker’s fee or commission arising out of the transactions contemplated by this Agreement or the Ancillary Documents. Each Investor agrees to indemnify and hold harmless the Company from any liability for any commission or compensation in the nature of a finder’s or broker’s fee arising out of the transactions contemplated by this Agreement or the Ancillary Documents (and the costs and expenses of defending against such liability or asserted liability) for which such Investor or any of its officers, directors, members, managers, partners, Equity Holders, or representatives is responsible. The Company agrees to indemnify and hold harmless each Investor from any liability for any commission or compensation in the nature of a finder’s or broker’s fee arising out of the transactions contemplated by this Agreement (and the costs and expenses of defending against such

liability or asserted liability) for which the Company or any of its officers, directors, members, managers, partners, Equity Holders, or representatives is responsible.

## **ARTICLE VI MISCELLANEOUS**

6.1 Termination. As to LaunchTN, this Agreement will terminate immediately without further action of the Parties on the date which LaunchTN no longer holds an interest in the Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged). Otherwise, this Agreement shall terminate upon the earliest to occur of:

- (a) the mutual written consent of the Parties to termination; or
- (b) the date on which all Investors no longer holds an interest in the Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged).

In the event of the termination of this Agreement as provided in this Section 6.1, this Agreement shall forthwith become void and there shall be no liability on the part of any Party, except that nothing herein shall relieve any Party from liability for any breach of this Agreement.

### 6.2 Survival.

(a) This Agreement and all representations, warranties, covenants and agreements made herein shall survive the Closing without limitation.

(b) The covenants set forth in Article IV, the agreements set forth in Article V, and the agreements constituting Annex F and Annex K attached hereto shall, to the extent such covenants do not explicitly terminate at such time as the Investors no longer own any Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged), survive the termination of this Agreement without limitation until the date on which the Investors no longer own any Securities (or any other securities into which the Securities are converted or for which the Securities are exchanged) or unless otherwise indicated.

(c) The rights and remedies of the Investors with respect to the representations, warranties, covenants and obligations of the Company herein shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time by, any Investor or any Investor's agents or representatives.

6.3 Amendment. No amendment of any provision of this Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each Party, except as otherwise provided in Section 4.1(a)(ii)(A). No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by Law.

6.4 Waiver of Conditions. The conditions to each Party's obligation to consummate the Purchase are for the sole benefit of such party and may be waived by such Party in whole or in part to the extent permitted by applicable Law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving Party that makes express reference to the provision or provisions subject to such waiver.

6.5 Governing Law and Jury Waiver. This Agreement and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the Parties, and/or the interpretation or enforcement of the rights and duties of the Parties shall be enforced, governed and construed in all respects (whether in contract or in tort) in accordance with the federal Law of the United States, if and to the extent such Law is applicable, and otherwise in accordance with the Laws of the State of [\_\_\_\_\_] applicable to contracts made and to be performed entirely within such State. To the extent permitted by applicable Law, each of the parties hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Agreement or the Purchase contemplated hereby.

6.6 Notices. Any notice, request, instruction or other document to be given hereunder by any Party to shall be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the next Business Day following the date of dispatch if delivered by a recognized next day courier service. All notices to the Company shall be delivered as set forth on the cover page of this Agreement, or pursuant to such other instruction as may be designated in writing by the Company to the Investors. All notices to the Investors shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Investors to the Company.

If to LaunchTN:	Tennessee Technology Development Corporation d/b/a Launch Tennessee 230 4th Avenue North, Suite 601 Nashville, Tennessee 37219 Facsimile: (615) 249-9949 Attention: Brad Smith, Interim President and CEO
-----------------	--

If to the Company:	To the individual at the contact information set forth on the Cover Page to this Agreement.
--------------------	---

If to the Approved Investor(s):	To the individual(s) at the contact information set forth on <u>Annex A</u> to this Agreement.
---------------------------------	--

6.7 Assignment. Neither this Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any Party without the prior written consent of the other Parties, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company's Equity Holders (a "Business Combination") where such Party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale, (b) an assignment of certain rights as provided in Annex F or (c) an assignment by an Investor of this Agreement to an Affiliate of the Investor; *provided* that if an Investor assigns ("Assigning Investor") this Agreement to an Affiliate, the Assigning Investor shall be relieved of its obligations under this Agreement but (i) all rights, remedies and obligations of the Assigning Investor hereunder shall continue and be enforceable by such Affiliate, (ii) the Company's obligations and liabilities hereunder shall continue to be outstanding and (iii) all references to the Assigning Investor herein shall be deemed to be references to such Affiliate.

6.8 Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of

the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

6.9 No Third Party Beneficiaries. Other than as expressly provided herein, nothing contained in this Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investors any benefit, right or remedies.

6.10 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is accordingly agreed that the parties shall be entitled (without the necessity of posting a bond) to specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at law or equity.

6.11 Interpretation. When a reference is made in this Agreement to “Articles” or “Sections” such reference shall be to an Article or Section of the Annex of this Agreement in which such reference is contained, unless otherwise indicated. When a reference is made in this Agreement to an “Annex”, such reference shall be to an Annex to this Agreement, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to “herein”, “hereof”, “hereunder” and the like refer to this Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Agreement are for reference purposes only and are not part of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. No rule of construction against the draftsman shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is entered into between sophisticated parties advised by counsel. All references to “\$” or “dollars” mean the lawful currency of the United States of America. Except as expressly stated in this Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a “Business Day” shall mean any day except Saturday, Sunday and any day on which banking institutions in the State of Tennessee generally are authorized or required by Law or other governmental actions to close.

**ANNEX E**

**DISCLOSURE SCHEDULE**

---

**Schedule 2.1 – Organization, Authority and Subsidiaries**

*List all Company Subsidiaries (as defined in Section 2.1 of the General Terms and Conditions). If none, please so indicate by checking the box: .*

**Schedule 2.2(a) – Pre-Closing Capitalization**

*Set forth below is a true, accurate, and complete list of (i) all authorized securities of the Company and (ii) all issued and outstanding securities of the Company and the names of the respective record holders thereof, in each case immediately prior to the Closing.*

*List any exceptions to the representation and warranty in the second sentence of Section 2.2(a) of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.2(c) – Post-Closing Capitalization**

*Set forth below is a true, accurate, and complete list of (i) all issued and outstanding securities of the Company, and (ii) all outstanding options, warrants, subscriptions or other agreements or rights entitling any Person to purchase, subscribe for or acquire, or that would obligate the Company to issue to any Person, any equity or other securities of the Company, as well as all outstanding securities convertible into or exchangeable for other securities of the Company, in each case immediately following the Closing.*

**Schedule 2.3 – Restrictions on Transfer**

*List any exceptions to the representation and warranty in the second sentence of Section 2.3 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.4(c) – Notices, Applications, Consents, Etc.**

*List any exceptions to the representation and warranty in Section 2.4(c) of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.7 – Material Adverse Effect**

*List any exceptions to the representation and warranty in Section 2.7 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.11 – Litigation**

*List any exceptions to the representation and warranty in Section 2.11 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.14 – Compliance with Laws**

*List any exceptions to the representation and warranty in Section 2.14 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.15(a) – Compensation**

*Set forth below is a detailed description of all compensation, including salary, bonus, severance obligations and deferred compensation paid or payable for each Executive Officer, employee, consultant and independent contractor of the Company.*

**Schedule 2.15(d) – Severance Payments and Policies**

*List any exceptions to the representation and warranty in the third sentence of Section 2.15(d) of the General Terms and Conditions. If none, please so indicate by checking the box: .*

*List any exceptions to the representation and warranty in the last sentence of Section 2.15(d) of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.15(f) – Employee Benefit Plans**

*Set forth below is a true, accurate and complete list of each employee benefit plan subject to ERISA maintained, established or sponsored by the Company, or which the Company participates in or contributes to.*

**Schedule 2.16 – Taxes**

*List any exceptions to the representation and warranty in the second to last sentence of Section 2.16 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**Schedule 2.19 – Intellectual Property**

*Set forth below is a list of all of the items required to be disclosed pursuant to Section 2.19 of the General Terms and Conditions.*

**Schedule 2.21 – Related Party Transactions**

*List any exceptions to the representation and warranty in Section 2.21 of the General Terms and Conditions. If none, please so indicate by checking the box: .*

**ANNEX F**

**INVESTORS' RIGHTS AGREEMENT**

---

[SEE ATTACHED]

**ANNEX G**

**REQUIRED AMENDMENTS TO ORGANIZATIONAL DOCUMENTS**

---

[SEE ATTACHED]

**ANNEX H**

**FORM OF OFFICER'S CERTIFICATE**

---

**OFFICER'S CERTIFICATE**

**OF**

**[COMPANY]**

In connection with that certain Securities Purchase Agreement, dated [DATE], 201\_\_ (the "Agreement"), by and among [COMPANY] (the "Company"), the Tennessee Technology Development Corporation d/b/a Launch Tennessee, and the Approved Investor(s) listed at Annex A to the Agreement, the undersigned does hereby certify as follows:

1. I am a duly elected/appointed [TITLE] of the Company.
2. Attached as Exhibit A hereto is a true, complete and correct copy of the articles of incorporation, articles of association, or similar organizational document of the Company and any amendments thereto as presently on file with the [Secretary of State] of the State of [State].
3. Attached as Exhibit B hereto is a true, complete and correct copy of **[the bylaws of the Company as presently in effect] [the operating agreement of the Company as presently in effect] [the partnership agreement of the Company as presently in effect] [and] [the Company's shareholders' agreement as presently in effect]**.
4. Attached as Exhibit C hereto is a true, complete and correct copy of resolutions adopted **[at a duly convened meeting at which a quorum was present and acting /by unanimous written consent]** of the [Board of Directors] of the Company (the "[Board]"). Such resolutions are now in full force and effect and have not been modified, amended or revoked and are the only resolutions of the [Board] relating to the Agreement.
5. Attached as Exhibit D hereto is a true, complete and correct copy of the resolutions adopted **[at a duly convened meeting at which a quorum was present and acting / by unanimous written consent] of the [shareholders]** of the Company (the "[Shareholders]"). Such resolutions are now in full force and effect and have not been modified, amended or revoked and are the only resolutions of the [Shareholders] relating to the Agreement. -OR- [Shareholder] consent is not required in connection with the execution, delivery and performance of the Agreement by the Company.
6. Attached as Exhibit E is a true, complete and correct copy of the Organizational Documents of the Company, which has been filed with, and accepted by, the Secretary of State of the State of [\_\_\_\_\_].-AND/OR- Attached as Exhibit E is a true, complete and correct copy of the Amended and Restated [Operating] Agreement, which has been filed adopted **[at a duly convened meeting at which a quorum was present and acting / by unanimous written consent]** of the [members/partners] of the Company.
7. The representations and warranties of the Company set forth in Article II of Annex C of the Agreement are true and correct in all respects as though as of the date hereof (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all respects as of such other date) and the Company has performed in all material respects all agreements, covenants and obligations required to be performed by it under the Agreement.

The foregoing certifications are made and delivered as of [DATE], 201\_\_ pursuant to Section 1.3 of Annex D of the Agreement.

Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

**IN WITNESS WHEREOF**, this Officer's Certificate has been duly executed and delivered as of the [\_\_] day of [\_\_\_\_\_], 2012.

[COMPANY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ANNEX I**

**FORM OF ANNUAL REPORT AND CERTIFICATION**

---

[SEE ATTACHED]



**INCITE Co-Investment Fund**  
**ANNUAL REPORT AND CERTIFICATION**

This Annual Report and Certification (this “Certification”) is provided by [*Name of Qualified Business*] (the “Company”) to the Investors in accordance with Section [\_\_\_] of that certain [*Securities Purchase Agreement*], dated \_\_\_\_\_, 20\_\_\_\_, by and among the Company and the Investors (the “Agreement”). All information provided by the Company should be as of **December 31st** of the immediately preceding year ended. Capitalized terms used but not defined in this Certification have the same meanings given to them in the Agreement.

1. Qualified Investment Identification Number:

---

2. Census tract in which the principal executive office of the Company is located:

---

3. Zip code in which the principal executive office of the Company is located:

---

4. Company annual revenues (\$) for the last fiscal year ended:

---

5. Number of full-time equivalent (FTE) employees of the Company:

---

6. The North American Industry Classification System (NAICS) code for the Company’s industry:

---

7. The year in which the Company was incorporated or otherwise organized:

---

8. Estimated number of jobs created as a result of the Investors’ investment in the Company:

---

9. Estimated number of jobs retained as a result of the Investors' investment in the Company:

---

10. The amount of all additional private financing (\$) received by the Company after the closing of the Investors' investment in the Company:

---

(a) The amount (\$) of such additional private financing that was the cause and result of the Investors' investment in the Company:

---

(b) Describe the rationale for determining that the amount of additional private financing reported in (a) above was the cause and result of the Investors' investment in the Company:

---

---

---

The Company, and the undersigned on behalf of the Company, hereby affirmatively certify that (i) no false statements have been made and no false information has been provided in connection with this Certification and (ii) all information provided in this Certification is complete and accurate with no material omissions.

---

*Legal Name of Company*

---

*Signature of Executive Officer*

---

*Name of Executive Officer (please print)*

---

*Title of Executive Officer*

---

*Date*

## ANNEX J

### FORM OF LEGAL OPINION

---

(a) The Company has been duly formed and is validly existing as a **[TYPE OF ORGANIZATION]** and is in good standing under the laws of the jurisdiction of its organization. The Company has been duly qualified as a foreign entity for the transaction of business and is in good standing under the laws of [\_\_\_\_], [\_\_\_\_] and [\_\_\_\_\_].

(b) The Company has the requisite power and authority to execute and deliver the Agreement, to perform its obligations thereunder, and to consummate the transactions contemplated thereby. The Company has all necessary power and authority to own, operate and lease its properties and to carry on its business as it is being conducted.

(c) The execution, delivery and performance by the Company of the Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company and its equity holders, and no further approval or authorization is required on the part of the Company.

(d) The Agreement is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(e) The execution and delivery by the Company of this Agreement and the performance by the Company of its obligations thereunder, including its issuance and sale of the Securities **[and the issuance and sale of other securities into which the Securities are converted or for which the Securities are exchanged (the "Conversion Shares")]**, do not and will not (i) violate **[the law of the Company's jurisdiction of organization]** or United States federal law; (ii) violate or conflict with any provision of its **[charter]** or **[bylaws]** or other organizational documents, (iii) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Company Subsidiary under any of the terms, conditions or provisions of its organizational documents or under any agreement, contract, indenture, lease, mortgage, power of attorney, evidence of indebtedness, letter of credit, license, instrument, obligation, purchase or sales order, or other commitment, whether oral or written, to which it is a party or by which it or any of its properties is bound or (iv) result in a breach or violation of, or default under any judgment, decree or order known to us that is applicable to the Company.

(f) Other than the filing of **[the Form D under the Securities Act of 1933 and]** any amendment to its organizational documents required by the Agreement with the **[Secretary of State]** of its jurisdiction of organization or other applicable Governmental Entity, such filings and approvals as are required to be made or obtained under any state "blue sky" laws and such consents and approvals that have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company in connection with the consummation by the Company of the Purchase.

(g) Set forth on **Schedule 2.2(a)** is an accurate and complete list of (i) all authorized securities of the Company and (ii) all issued and outstanding securities of the Company, in each case immediately prior to the Closing. All such issued and outstanding securities have been duly authorized and validly issued and are fully paid and nonassessable.

(h) The Securities have been duly and validly authorized, and, when issued and delivered pursuant to the Agreement, the Securities will be duly and validly issued and fully paid and non-assessable, will not be issued in violation of any preemptive rights. **[The Conversion Shares have been duly authorized and, when issued in accordance with the Company's [organizational documents] upon conversion of the Securities, will be validly issued, fully paid and nonassessable.]** The issuance and sale of the Securities [and the issuance of the Conversion Shares] [is/are] not subject to any preemptive rights under the [law of the Company's organization] or the Company's [organizational documents]. [The board of directors of the Company has duly adopted a resolution reserving a sufficient amount of Company equity for issuance on conversion of the Conversion Shares, such resolution remaining in full force and effect as of the date hereof.]

(i) Based on, and assuming the accuracy of, the representations of each of the Investors under the Agreement, the sale of the Securities pursuant to the Agreement does not[, **and the issuance of the Conversion Shares upon conversion of the Securities in accordance with the Company's [charter] will not (assuming no commission or other remuneration is paid or given directly or indirectly for soliciting the conversion),**] require registration under the Securities Act.

(j) To our knowledge, except as disclosed in the Disclosure Schedule to the Agreement, there is no lawsuit, proceeding or investigation pending or threatened against or involving the Company that would have a Company Material Adverse Effect or on the ability of the Company to consummate the transactions contemplated by the Agreement. We note that we have not conducted a docket search in any jurisdiction with respect to lawsuits that may be pending against the Company.

**ANNEX K**

**FORM OF CO-INVESTMENT AGREEMENT**

---

[SEE ATTACHED]

## CO-INVESTMENT AGREEMENT

THIS CO-INVESTMENT AGREEMENT (this “Co-Investment Agreement”) is made and entered into as of [date] by and among the Tennessee Technology Development Corporation d/b/a Launch Tennessee, a Tennessee non-profit corporation (“LaunchTN”) and the investor(s) listed on Exhibit A attached hereto (the “Investors”), and is acknowledged by **[name of Qualified Business]**, a **[state of organization and type of entity]** (the “Company”). In this Co-Investment Agreement, LaunchTN and the Investors (together with any subsequent investors or transferees who become parties hereto pursuant to Section 16 below) are referred to collectively as the “Parties,” and each is referred to individually as a “Party.”

### RECITALS

WHEREAS, in connection with the INCITE Co-Investment Fund (the “Fund”), in compliance with the Program Guidelines governing the Fund (the “Program Guidelines”) and concurrently with the execution of this Co-Investment Agreement, the Parties have entered into a Securities Purchase Agreement (the “Purchase Agreement”) with the Company, which provides for the sale and issuance by the Company and the purchase by the Parties of **[total number and type]** of the Company’s **[class of securities]** (together with any securities into which such securities are converted or for which such securities are exchanged, the “Securities”); and

WHEREAS, in connection with the purchase of the Securities by the Parties, the Parties desire to set forth, among other things, their agreements and understandings with respect to the voting of the Securities purchased by LaunchTN and certain reporting obligations of the Investors as participants in the Fund.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, agreements, representations, and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Voting of LaunchTN Securities. LaunchTN constitutes and appoints the Lead Investor (as defined in Section 8 hereof), or its designee, or either of them, with individual power of substitution, as its proxy and attorney-in-fact to vote the Securities owned by LaunchTN upon all matters to which LaunchTN, as a holder of such Securities, is entitled to vote. The proxy granted pursuant to this Section 1 is coupled with an interest and shall be irrevocable unless and until this Co-Investment Agreement terminates or expires pursuant to Section 7 hereof. LaunchTN hereby revokes any and all previous proxies or powers of attorney with respect to the Securities owned by LaunchTN and shall not hereafter, unless and until this Co-Investment Agreement terminates or expires pursuant to Section 7 hereof, grant any other proxy or power of attorney with respect to such Securities, deposit any of such Securities into a voting trust or enter into any agreement (other than this Co-Investment Agreement), arrangement or understanding with any person, directly or indirectly, to vote or grant any proxy or give instructions with respect to the voting of such Securities.

2. Distribution of Proceeds from Securities.

(a) Upon the occurrence of a Liquidity Event, LaunchTN shall make distribution of cash and/or Marketable Securities received by LaunchTN as proceeds from the Securities owned by LaunchTN that are the subject of the Liquidity Event as set forth in Section 2(b). For purposes of this Section 2, the term “Liquidity Event” shall mean the consummation of any transaction in or as a result of which LaunchTN receives cash or Marketable Securities in exchange for all or any portion of the Securities owned by LaunchTN. For purposes of this Section 2, the term “Marketable Securities” shall

mean equity securities that have a “readily determinable fair value,” as defined by the Financial Accounting Standards Board Accounting Standards Codification, as amended.

(b) Upon LaunchTN’s receipt of cash and/or Marketable Securities as proceeds from a Liquidity Event in respect of Securities owned by LaunchTN, LaunchTN shall distribute to the Investors, in the aggregate, an amount of such cash and/or Marketable Securities equal to 25% of LaunchTN’s Net Proceeds, if any, from the Liquidity Event (the “Carry”). Such distributions of the Carry shall be made pro rata in accordance with each Investor’s respective percentage ownership of the Securities. If LaunchTN’s proceeds from a Liquidity Event consist of both cash and Marketable Securities, the distribution of the Carry to the Investors shall be made partly in cash and partly in Marketable Securities, with the specific percentages of cash and Marketable Securities to be distributed to the Investors to be calculated based on the corresponding relative percentages of cash and Marketable Securities received as proceeds from the Liquidity Event by LaunchTN. For purposes of this Section 2(b), the term “Net Proceeds” shall mean an amount equal to (i) the sum of (A) the aggregate cash proceeds received by LaunchTN as a result of a Liquidity Event in respect of Securities owned by LaunchTN and (B) the fair market value of the Marketable Securities received by LaunchTN as a result of the Liquidity Event in respect of Securities owned by LaunchTN, *less* (ii) the amount of LaunchTN’s unreturned initial capital investment in the Securities. For all purposes of calculating the amounts distributable by LaunchTN to the Investors under this Section 2(b), including the calculation of LaunchTN’s Net Proceeds from a Liquidity Event and the calculation of the Carry and the amount thereof distributable to each Investor, Marketable Securities shall be valued at their fair market value as of the date of the Liquidity Event giving rise to such calculations.

(c) The provisions of this Section 2 shall survive any termination of this Agreement until the fulfillment of LaunchTN’s obligations hereunder.

### 3. Representations and Warranties.

(a) Representations and Warranties of Investors. Each Investor, severally on its own behalf and not jointly, hereby represents and warrants to LaunchTN and the other Investors as follows:

(i) Such Investor has full corporate or other requisite power and authority to execute and deliver this Co-Investment Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Co-Investment Agreement by such Investor have been duly authorized and approved by all necessary corporate or other action on the part of such Investor; and

(ii) When executed and delivered by such Investor, this Co-Investment Agreement will constitute the valid and legally binding obligation of such Investor, enforceable against such Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, or other similar laws from time to time in effect which relate to or affect creditors’ rights generally or by general principles of equity.

(b) Representations and Warranties of LaunchTN. LaunchTN hereby represents and warrants to the Investors as follows:

(i) LaunchTN has full corporate power and authority to execute and deliver this Co-Investment Agreement and to perform its obligations hereunder, and the execution, delivery and performance of this Co-Investment Agreement by LaunchTN have been duly authorized and approved by all necessary corporate action on the part of LaunchTN; and

(ii) When executed and delivered by LaunchTN, this Co-Investment Agreement will constitute the valid and legally binding obligation of LaunchTN, enforceable against

LaunchTN in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, or other similar laws from time to time in effect which relate to or affect creditors' rights generally or by general principles of equity.

4. Investor Reporting.

(a) Reporting Requirements.

(i) On or before March 15th of each year, the Investors shall deliver to LaunchTN a completed Annual Report and Certification in substantially the form attached hereto as Exhibit B (the "Certification"), signed by each Investor, or a duly authorized representative thereof; provided, however, that LaunchTN shall have the right to amend or modify Exhibit B from time to time to (A) reflect changes in applicable laws, rules, or regulations or (B) make such clarifications and/or technical corrections to Exhibit B as LaunchTN determines to be reasonably necessary.

(ii) On or before March 15th of each year, each Investor shall provide LaunchTN the value of the Securities of such Investor as currently reflected on the books, records and financial statements of such Investor, as well as a detailed explanation of the underlying methodology used to derive such value.

(b) Non-Compliance. In the event the Investors fail to deliver any Certification to LaunchTN by March 15th in accordance with Section 4(a)(i) above, the Investors, jointly and severally, shall pay to LaunchTN the sum of \$5,000, as damages, and not as a penalty, for non-compliance with the reporting requirement set forth in Section 4(a)(i) above. Furthermore, the Investors shall pay to LaunchTN, as damages, and not as a penalty, for non-compliance with the reporting requirement set forth in Section 4(a)(i) above, the additional sum of \$2,500 for each additional 30 days after March 15th during which the Investors fail to deliver to LaunchTN such Certification.

(c) Survival. The provisions of this Section 4 shall survive any termination of this Agreement until the fulfillment of the obligations of the Investors with respect to the next annual reporting period following such termination.

5. Notice of Exercise or Waiver of Rights. The Investors shall give LaunchTN reasonable advance written notice of any exercise or waiver by any of the Investors of any rights of the Investors as holders of the Securities, including without limitation, as applicable, any exercise or waiver by the Investors of any Preemptive Right associated with the Securities. As used in this Co-Investment Agreement, a "Preemptive Right" shall mean any right given to a holder of Company equity (an "Equity Holder") to purchase newly issued securities of the Company in order to prevent dilution of the Equity Holder's ownership interest in the Company. The term Preemptive Right, however, does not include rights arising out of or in connection with options, warrants, other derivative securities or a convertible feature of the Securities. Furthermore, the term Preemptive Right includes only those rights arising with respect to the Securities, and shall not include any rights arising with respect any other Company securities owned or controlled by the Investors. The Investors shall also give LaunchTN reasonable advance written notice of any sale, transfer, or other disposition by the Investors of all or any portion of the Securities.

6. Preemptive Right; New Application Required. In the event that any one or more of the Investors intend to exercise any Preemptive Right, the participating Investors agree to submit to LaunchTN the specified form of Preemptive Right exercise application (to be provided and available at [www.tntechology.org/incite](http://www.tntechology.org/incite)) with respect to and at least 10 days prior to the exercise of such Preemptive Right. Submission of the Preemptive Right exercise application will afford LaunchTN the opportunity to

participate in such Preemptive Right exercise, provided that (a) the Company has not previously received, in the aggregate, the maximum amount of co-investment funding permitted from the Fund as provided in the Program Guidelines, (b) all co-investment funds available in the Fund have not already been fully allocated, and (c) the Fund has not terminated in accordance with the Program Guidelines.

7. Term and Termination. This Co-Investment Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest of the following events: (a) at such time as no Investor holds any Securities; (b) at such time as LaunchTN no longer holds any Securities; and (c) upon written notice by LaunchTN of its intent to terminate this Co-Investment Agreement.

8. Lead Investor. The Investors shall designate one Investor to serve as the lead investor for purposes of this Co-Investment Agreement (the “Lead Investor”) by listing such Investor as the Lead Investor on Exhibit A attached hereto. The Investors agree that, at all times prior to the termination or expiration of this Co-Investment Agreement, one Investor shall serve as the Lead Investor. If the Investor serving as the Lead Investor hereunder is unable to fulfill its obligations to vote the Securities owned by LaunchTN in accordance with Section 1 for any reason, including without limitation as a result of the Lead Investor’s disposition of all Securities owned by such Lead Investor, the other Investors shall, upon learning of such inability, promptly (a) appoint another Investor to serve as the Lead Investor hereunder and (b) notify LaunchTN in writing of the identity of the new Lead Investor.

9. Transfer of Securities to Affiliates. An Investor shall not sell, assign, or otherwise transfer all or any portion of the Securities owned by such Investor to an Affiliate of the Investor unless such Affiliate expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Co-Investment Agreement to be performed and observed by the Investor. For purposes of this Co-Investment Agreement, the term “Affiliate” shall mean, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with such person. For purposes of the foregoing definition of “Affiliate,” “controlling” (including, with correlative meanings, the terms “controlled by” and “under common control with”), when used with respect to any person, means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and/or policies of such person, whether through the ownership of voting securities or by contract or otherwise.

10. Headings. The section and other headings used in this Co-Investment Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Co-Investment Agreement or any of the terms or provisions hereof.

11. Amendment and Waivers. This Co-Investment Agreement may not be amended, modified, or supplemented except by a written instrument executed by each of the Parties. No waiver of any term or provision of this Co-Investment Agreement shall be effective unless set forth in a written instrument signed by the Party granting such waiver.

12. Partnership. Nothing contained in this Co-Investment Agreement shall be construed as creating a partnership or joint venture by or among the Parties.

13. Severability. In the event any term or provision of this Co-Investment Agreement is held to be invalid, illegal, or unenforceable for any reason or in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Co-Investment Agreement, which shall be and remain in full force and effect enforceable in accordance with its terms.

14. Governing Law and Submission to Jurisdiction. This Co-Investment Agreement and any claim, controversy or dispute arising under or related to this Co-Investment Agreement, the relationship of the Parties, and/or the interpretation or enforcement of the rights and duties of the Parties shall be enforced, governed and construed in all respects (whether in contract or in tort) in accordance with the federal law of the United States, if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of Tennessee applicable to contracts made and to be performed entirely within such State. Each of the Parties (a) submits to the exclusive jurisdiction and venue of the state courts of record located in Davidson County, Tennessee and the United States District Court for the Middle District of Tennessee for any and all civil actions, suits or proceedings arising out of or relating to this Co-Investment Agreement and (b) agrees that notice may be served upon the Parties as set forth in Section 18 below. To the extent permitted by applicable law, each of the Parties hereby unconditionally waives its rights to trial by jury in any civil legal action or proceeding relating to this Co-Investment Agreement.

15. Further Assurances. Each of the Parties agrees to take such other and further actions and execute, acknowledge, and deliver such other and further agreements, documents, and instruments as may be necessary to carry out and fully effectuate the purposes and intent of this Co-Investment Agreement.

16. Successors and Assigns. This Co-Investment Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that this Co-Investment Agreement shall not be assignable by a Party without the express prior written consent of all other Parties hereto, which consent may not be unreasonably withheld.

17. Counterparts. This Co-Investment Agreement may be executed by the Parties in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18. Notices. All notices, requests, demands, consents, and other communications required or permitted hereunder shall be in writing and will be deemed given (a) when delivered, if delivered personally, (b) on the third business day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested), (c) on the first business day after mailing, if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery, or (d) upon receipt of confirmation of a successful transmission, if sent by facsimile, electronic mail, or other electronic transmission, in each case to the Parties at the following addresses (or such other addresses as the Parties may designate from time to time by notice given in accordance with this Section 18:

If to LaunchTN: Tennessee Technology Development Corporation  
d/b/a Launch Tennessee  
230 4th Avenue North, Suite 601  
Nashville, Tennessee 37219  
Facsimile: (615) 249-9949  
Attention: Brad Smith, Interim President and CEO

With a copy to: **[Company]**  
**[Address]**  
**[Address]**  
Facsimile: (\_\_\_\_\_) \_\_\_\_\_  
Attention: \_\_\_\_\_

If to one or more of the Investors: To such Investor(s) at the address(es) for such Investor(s) set forth on Exhibit A to this Co-Investment

Agreement

With a copy to:

**[Company]**

**[Address]**

**[Address]**

Facsimile: (\_\_\_\_) \_\_\_\_\_

Attention: \_\_\_\_\_

19. Construction. In the event an ambiguity or question of intent arises, this Co-Investment Agreement shall be construed as if drafted jointly by the Parties 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 Co-Investment Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have duly executed this Co-Investment Agreement as of the date set forth above.

**LAUNCHTN**

Tennessee Technology Development Corporation  
d/b/a Launch Tennessee

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**INVESTOR(S)**

**[Insert Name]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Add additional signature blocks, as necessary]

The Company, by signing below, acknowledges the existence and terms of this Co-Investment Agreement.

**COMPANY**

**[Insert Name]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

Investor Information

<hr/> <i>Name of Lead Investor</i> <hr/>	<hr/> <i>Approved Investor No.</i> <hr/>
<hr/> <i>Street Address for Notices</i> <hr/>	<hr/> <i>Organizational Form (e.g., corporation, limited liability company)</i> <hr/>
<hr/> <i>City</i> <i>State</i> <i>Zip Code</i> <hr/>	<hr/> <i>Jurisdiction of Organization</i> <hr/>
<hr/> <i>Fax Number for Notices</i> <hr/>	<hr/> <i>Name of Contact Person to Receive Notices</i> <hr/>
<hr/> <i>Name of Investor</i> <hr/>	<hr/> <i>Approved Investor No.</i> <hr/>
<hr/> <i>Street Address for Notices</i> <hr/>	<hr/> <i>Organizational Form (e.g., corporation, limited liability company)</i> <hr/>
<hr/> <i>City</i> <i>State</i> <i>Zip Code</i> <hr/>	<hr/> <i>Jurisdiction of Organization</i> <hr/>
<hr/> <i>Fax Number for Notices</i> <hr/>	<hr/> <i>Name of Contact Person to Receive Notices</i> <hr/>
<hr/> <i>Name of Investor</i> <hr/>	<hr/> <i>Approved Investor No.</i> <hr/>
<hr/> <i>Street Address for Notices</i> <hr/>	<hr/> <i>Organizational Form (e.g., corporation, limited liability company)</i> <hr/>
<hr/> <i>City</i> <i>State</i> <i>Zip Code</i> <hr/>	<hr/> <i>Jurisdiction of Organization</i> <hr/>
<hr/> <i>Fax Number for Notices</i> <hr/>	<hr/> <i>Name of Contact Person to Receive Notices</i> <hr/>

**Exhibit B**

Form of Annual Report and Certification

*[See attached]*



**INCITE Co-Investment Fund**  
**ANNUAL REPORT AND CERTIFICATION**

This Annual Report and Certification (this “Certification”) is provided by the Investors to LaunchTN in accordance with Section 4 of that certain Co-Investment Agreement, dated \_\_\_\_\_, 20\_\_\_\_, by and among LaunchTN and the Investors (the “Agreement”). All information provided by the Investors should be as of **December 31st** of the immediately preceding year ended. Capitalized terms used but not defined in this Certification have the same meanings given to them in the Agreement.

1. Qualified Investment Identification Number:

\_\_\_\_\_

2. Census tract in which the principal executive office of the Company is located:

\_\_\_\_\_

3. Zip code in which the principal executive office of the Company is located:

\_\_\_\_\_

4. The total amount (\$) of financing invested in the Company through the INCITE Co-Investment Fund and, of such amount, that portion invested by LaunchTN:

Total amount of financing (\$): \_\_\_\_\_

LaunchTN investment (\$): \_\_\_\_\_

5. Date of initial investment in the Company (i.e., date of closing under the Purchase Agreement):

\_\_\_\_\_

6. Company annual revenues (\$) for the last fiscal year ended:

\_\_\_\_\_

7. Number of full-time equivalent (FTE) employees of the Company:

\_\_\_\_\_

8. The North American Industry Classification System (NAICS) code for the Company’s industry:

\_\_\_\_\_

9. The year in which the Company was incorporated or otherwise organized:

---

10. Estimated number of jobs created as a result of the Investors' investment in the Company:

---

11. Estimated number of jobs retained as a result of the Investors' investment in the Company:

---

12. The amount of all additional private financing (\$) received by the Company after the closing of the Investors' investment in the Company:

---

(a) The amount (\$) of such additional private financing that was the cause and result of the Investors' investment in the Company:

---

(b) Describe the rationale for determining that the amount of additional private financing reported in (a) above was the cause and result of the Investors' investment in the Company:

---

---

---

13. Participation by target populations:

---

---

*[Signature Page Follows]*

Each Investor hereby affirmatively certifies that (i) no false statements have been made and no false information has been provided in connection with this Certification and (ii) all information provided in this Certification is complete and accurate with no material omissions.

INVESTOR(S):

[INSERT NAME]

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

[Add additional Investor signature blocks, as necessary]

ButlerSnow 11999253v3