UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): December 19, 2022

BITNILE HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware	001-12711	94-1721931
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141
(Address of principal executive offices) (Zip Code)

(949) 444-5464
(Registrant's telephone number, including area code)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.001 par value	NILE	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value $0.001 per share	NILE PRD	NYSE American

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement

On December 16, 2022 (the "**Closing Date**"), BitNile Holdings, Inc., a Delaware corporation (the "**Company**") entered into a Securities Purchase Agreement (the "**SPA**") with an accredited investor (the "**Investor**") providing for the issuance of a secured promissory note with an aggregate principal face amount of $14,700,000 (the "**Financing**").

Under the SPA, the Company shall repay, while the Note remains outstanding, (i) eighty percent (80%) of the proceeds it may receive from any financing conducted, other than at-the-market offerings and (ii) one hundred percent (100%) of the proceeds it may receive from the sale of marketable securities by Ault Lending, LLC ("**Ault Lending**"), the Company's wholly owned subsidiary. In addition, if Third Avenue Apartments, LLC ("**Third Avenue**"), the Company's wholly owned subsidiary, sells the property it owns in St. Peterburg, Florida, the Company shall use the net proceeds from the sale of such property in excess of $10 million, to repay the Note.

In addition, the Company agreed to issue 11,605,913 shares of the Company's common stock (the "**Registrable Shares**") to the Investor in exchange for the cancellation of all outstanding warrants previously issued to the Investor, which warrants were exercisable for 11,605,913 shares of the Company's common stock. The Company agreed to file a registration statement on Form S-3 to register the Registrable Shares and certain other shares owned by the Investor within ten (10) days of the Closing Date. The Company agreed to pay the Investor liquidated damages of approximately $120,000 per month that the Registrable Shares have not been registered.

Pursuant to the SPA, the Company, Ault Lending, BitNile, Inc. ("**BitNile**") and Esousa Group Holdings, LLC, as the collateral agent on behalf of the Investor (the "**Agent**") entered into a security agreement (the "**Security Agreement**"), pursuant to which (i) BitNile granted to the Investor a security interest in 12,000 Bitcoin miners and (ii) Ault Lending granted to the Investor a security interest in, among other items, substantially all of the Ault Lending's deposit accounts, securities accounts, chattel paper, documents, equipment, general intangibles, instruments and inventory, and all proceeds therefrom (the "**Assets**"), as set forth in the Security Agreement, except for assets previously granted security interests to other parties.

The Notes are further secured by a guaranty (the "**Guaranty**") provided by Ault Lending, BitNile, Ault & Company, Inc. ("**A&C**"), an affiliate of the Company, as well as by Milton C. Ault, the Company's Executive Chairman and the Chief Executive Officer of A&C.

Description of the Secured Promissory Note

The Note has a principal face amount of $15,700,000 and bears interest at 16% per annum. The maturity date of the Note is March 16, 2023, although if the Company repays at least $12 million of principal payment on or before the maturity date, the Company may extend the maturity date by forty-five (45) days by paying a fee of 10% of the outstanding balance owed as of the original maturity date. The Notes contain standard and customary events of default including, but not limited to, failure to make payments when due under the Note, failure to comply with certain covenants contained in the Note, or bankruptcy or insolvency of the Company. The Company may prepay any or all outstanding principal and accrued and unpaid interest at any time without penalty. The purchase price for the Notes was $13.5 million, of which $12 million was paid in cash and $1.5 million was a non-accountable expense allowance.

The foregoing descriptions of the Note, the SPA, the Security Agreement and the Guaranty do not purport to be complete and are qualified in their entirety by reference to their respective forms which are annexed hereto as **Exhibits 4.1, 10.1, 10.2** and **10.3**, respectively, to this Current Report on Form 8-K and are incorporated herein by reference. The foregoing does not purport to be a complete description of the rights and obligations of the parties thereunder and such descriptions are qualified in their entirety by reference to such exhibits.

Item 2.01 Completion of Acquisition or Disposition of Assets

As previously reported in the Current Report on Form 8-K filed by the Company on November 18, 2022, Circle 8 Newco LLC, a Delaware limited liability company ("**Circle 8 Newco**"), entered into an Asset Purchase Agreement (the "**Asset Purchase Agreement"**) with Circle 8 Crane Services LLC, a Delaware limited liability company ("**Circle 8 Crane Services**") pursuant to which Circle 8 Newco agreed to purchase substantially all of the assets (the "**Acquired Assets**") and assume certain specified liabilities of Circle 8 Crane Services (the "**Circle 8 Transaction**"). Circle 8 Newco is a wholly owned subsidiary of Circle 8 Holdco LLC, a Delaware limited liability company ("**Circle 8 Holdco**"). Circle 8 Holdco is a subsidiary of Ault Alliance, Inc., a Delaware corporation ("**Ault Alliance**") which is a wholly owned subsidiary of the Company. Ault Alliance owns a controlling interest in Circle 8 Holdco.

On December 19, 2022, the transaction closed and Circle 8 Newco purchased the Acquired Assets. As consideration for the acquisition of the Acquired Assets, Circle 8 Crane Services received Class D equity interests in Circle 8 Holdco and is eligible to receive cash earnout payments in an aggregate maximum amount of up to $2,100,000 based on the achievement by Circle 8 Newco of certain EBITDA targets over the three year period following the completion of the acquisition of the Acquired Assets by Circle 8 Newco. The Company contributed $12 million to Circle 8 Newco, and an independent third party contributed $4 million, of which approximately $11,650,000 of which was used to pay down a portion of the Circle 8 Crane Services' senior debt facility at the closing, $3,000,000 of which was used to pay off Circle 8 Crane Services' subordinated debt facility in full at the closing and $1,350,000 was used to pay the expenses of Circle 8 Newco and Circle 8 Crane Services. In addition, Circle 8 Newco assumed a new line of credit issued by Circle 8 Crane Services' current senior lender.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 3.02.

Item 7.01 Regulation FD Disclosure

On December 19, 2022, the Company issued a press release announcing the closing of the Financing. On December 19, 2022, the Company issued a press release announcing the closing of the Circle 8 Transaction. Copies of these press releases are furnished herewith as **Exhibit 99.1** and **Exhibit 99.2** and are incorporated by reference herein.

In accordance with General Instruction B.2 of Form 8-K, the information under this item shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing. This report will not be deemed an admission as to the materiality of any information required to be disclosed solely to satisfy the requirements of Regulation FD.

The Securities and Exchange Commission encourages registrants to disclose forward-looking information so that investors can better understand the future prospects of a registrant and make informed investment decisions. This Current Report on Form 8-K and exhibits may contain these types of statements, which are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, and which involve risks, uncertainties and reflect the Registrant's judgment as of the date of this Current Report on Form 8-K. Forward-looking statements may relate to, among other things, operating results and are indicated by words or phrases such as "expects," "should," "will," and similar words or phrases. These statements are subject to inherent uncertainties and risks that could cause actual results to differ materially from those anticipated at the date of this Current Report on Form 8-K. Investors are cautioned not to rely unduly on forward-looking statements when evaluating the information presented within.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits:

Exhibit No.	Description
4.1	Form of Note
10.1	Form of Securities Purchase Agreement
10.2	Form of Security Agreement
10.3	Form of Guaranty
99.1	Press release regarding the Financing issued by the Company on December 19, 2022
99.2	Press release regarding the Circle 8 Transaction issued by the Company on December 19, 2022
101	Pursuant to Rule 406 of Regulation S-T, the cover page is formatted in Inline XBRL (Inline eXtensible Business Reporting Language).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101).

SIGNATURE

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

BITNILE HOLDINGS, INC.

Dated: December 19, 2022

/s/ Henry Nisser
Henry Nisser
President and General Counsel

Exhibit 4.1

THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY.

BITNILE HOLDINGS, INC.

Original Issuance Discount
Senior Secured Promissory Note
due March 16, 2023

Note No. 12-16-2022-Note1

Face Amount: $14,700,000

Dated: December 16, 2022 (the "**Issuance Date**") Purchase Price: $13,500,000

For value received, BITNILE HOLDINGS, INC., a Delaware corporation (the "**Maker**" or the "**Company**"), hereby promises to pay to the order of _____ (the "**Holder**"), in accordance with the terms hereinafter provided, the principal amount of Fourteen Million Seven Hundred Thousand Dollars ($14,700,000) (the "**Principal Amount**").

All payments under or pursuant to this Original Issuance Discount Senior Secured Promissory Note (this "**Note**") shall be made in United States Dollars in immediately available funds to the Holder at the address of the Holder set forth in the Purchase Agreement (as hereinafter defined) or at such other place as the Holder may designate from time to time in writing to the Maker or by wire transfer of funds to the Holder's account, instructions for which are attached hereto as Exhibit A. The Company shall be obligated to make payments to the Investor as provided herein. The Outstanding Balance of this Note shall be due and payable on March 16, 2023 (the "**Maturity Date**") or at such earlier time as provided herein; provided, that the Holder, in its sole discretion, may extend the Maturity Date to any date after the original Maturity Date; and *provided, further* that to the extent the Maker has paid at least $12,000,000 of the Principal Amount on or before the Maturity Date, the Maker may extend the Maturity Date by forty-five (45) days beyond the original Maturity Date by paying a fee equal to 10% of the Outstanding Balance existing as of the Maturity Date to the Holder. In the event that the Maturity Date shall fall on Saturday or Sunday, such Maturity Date shall be the next succeeding Business Day. All calculations made pursuant to this Note shall be rounded down to three decimal places.

ARTICLE 1

1.1 Purchase Agreement. This Note has been executed and delivered pursuant to the Securities Purchase Agreement, dated as of December 16, 2022 (as the same may be amended from time to time, the "**Purchase Agreement**"), by and between the Maker, the Holder and the other signatories thereto. Capitalized terms used and not otherwise defined herein shall have the meanings set forth for such terms in the Purchase Agreement.

1.2 Interest. This Note shall bear simple interest on the outstanding Principal Amount at the rate of sixteen percent (16%) per annum, based on a 365-day year. Interest shall commence with the date hereof and shall continue on the outstanding Principal Amount until paid in full.

1.3 Prepayment. At any time after the Issuance Date, the Maker may repay all or any portion of the Outstanding Balance upon at least ten (10) days' prior written notice of the Holder.

1.4 Delisting from a Trading Market. If at any time the Class A Common Stock ceases to be listed on a Trading Market, (i) the Holder may deliver a demand for payment to the Company and, if such a demand is delivered, the Company shall, within three (3) Business Days following receipt of the demand for payment from the Holder, pay all of the Outstanding Balance.

1.5 Payment on Non-Business Days. Whenever any payment to be made shall be due on a day which is not a Business Day, such payment may be due on the next succeeding Business Day.

1.6 Transfer. This Note may be transferred or sold, subject to the provisions of Section 4.9 of this Note, or pledged, hypothecated or otherwise granted as security by the Holder.

1.7 Replacement. Upon receipt of a duly executed and notarized written statement from the Holder with respect to the loss, theft or destruction of this Note (or any replacement hereof), or, in the case of a mutilation of this Note, upon surrender and cancellation of such Note, the Maker shall issue a new Note, of like tenor and amount, in lieu of such lost, stolen, destroyed or mutilated Note.

1.8 Use of Proceeds. The Maker shall use the proceeds of this Note as set forth in the Purchase Agreement.

1.9 Status of Note and Security Interest. The Maker shall not, and shall not permit any of its Private Subsidiaries to incur, Indebtedness other than Permitted Indebtedness without the prior written consent of the Holder. Upon any Liquidation Event (as hereinafter defined), the Holder will be entitled to receive, before any distribution or payment is made upon, or set apart with respect to, any Indebtedness of the Maker, any Private Subsidiary or any class of capital stock of the Maker or such Private Subsidiary, an amount equal to the Outstanding Balance, provided, that the Holder shall be treated on a *pari passu* basis with any other signatories to the Purchase Agreement. For purposes of this Note, "**Liquidation Event**" means a liquidation pursuant to a filing of a petition for bankruptcy under applicable law or any other insolvency or debtor's relief, an assignment for the benefit of creditors, or a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Maker or any Private Subsidiary thereof.

1.10 Secured Note. The full amount of this Note is secured by the Collateral (as defined in the respective Security Documents) identified and described as security therefor in the Security Documents.

1.11 Taxes.

1.11.1 All payments by the Maker to the Holder hereunder will be made free and clear of and without deduction for any and all present or future taxes in respect of such payments and any deemed payments under applicable laws in respect of this Note. If any taxes are required by law to be deducted by the Maker from or in respect of any amounts payable to the Holder hereunder (i) the sum payable by the Maker will be increased as necessary so that, after making all required deductions for such Taxes (including deductions applicable to additional sums payable under this Section 1.11), the Holder will receive an amount equal to the sum it would have received if such deduction had not been made; (ii) the Maker will make such deductions; and (iii) the Maker will pay the full amount deducted to the relevant taxing authority in accordance with applicable law and if the Holder so requires, the Maker will promptly furnish to the Holder such written proof of payment.

1.11.2 If the Maker fails to pay any Taxes when due to the appropriate taxing authority or fails to increase the sum payable as prescribed in Section 1.11.1, the Maker will indemnify the Holder for any incremental taxes, interest or penalties that may become payable by the Holder as a result of any such failure. This Section 1.11 shall survive the termination of this Note and the payment of the Principal Amount and all other obligations payable herein.

ARTICLE 2

2.1 Events of Default. An "**Event of Default**" under this Note shall mean the occurrence of any of the events defined in the Purchase Agreement, and any of the additional events described below:

(a) any default in the payment of (i) the Principal Amount hereunder when due; or (ii) liquidated damages in respect of this Note as and when the same shall become due and payable (whether on the Maturity Date or by acceleration or otherwise) and any such default is not remedied within three (3) Business Days from the Event of Default occurring by the Company's failure to comply with this Section 2.1(a);

(b) the Maker or any Private Subsidiary or any other Obligor shall fail to observe or perform any other covenant, condition or agreement contained in this Note or any Transaction Document unless cured, if subject to cure, within ten (10) Business Days from the Event of Default;

(c) default shall be made in the performance or observance of any material covenant, condition or agreement contained in the Purchase Agreement or any other Transaction Document that is not covered by any other provisions of this Section 2.1 unless cured, if subject to cure, within ten (10) Business Days from the Event of Default;

(d) any representation or warranty made by the Maker or any of its Private Subsidiaries or any other Obligor herein or in the Purchase Agreement or any other Transaction Document shall prove to have been false or incorrect or breached in a material respect on the date as of which made unless cured, if subject to cure, within ten (10) Business Days from the Event of Default;

(e) unless otherwise approved in writing in advance by the Holder, the Maker shall announce an intention to pursue or consummate a Change of Control pursuant to that definition contained in the Purchase Agreement, or the Maker shall enter into any agreement, understanding or arrangement with respect to any Change of Control;

(f) the Maker or any of its Private Subsidiaries or any other Obligor shall (A) default in any payment of any amount or amounts of principal of or interest (if any) on any Indebtedness (other than the Indebtedness hereunder), the aggregate principal amount of which Indebtedness is in excess of $100,000 that will permit the holder or holders of such Indebtedness to become due prior to its stated maturity or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness to cause with the giving of notice if required, such Indebtedness to become due prior to its stated maturity and any such default is not remedied within ten (10) Business Days from the Event of Default occurring by the Company's failure to comply with this Section 2.1(f);

(g) the Maker or any of its Private Subsidiaries or any other Obligor shall: (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or assets; (ii) make a general assignment for the benefit of its creditors; (iii) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (iv) file a petition seeking to take advantage of any bankruptcy, insolvency, moratorium, reorganization or other similar law affecting the enforcement of creditors' rights generally; (v) acquiesce in writing to any petition filed against it in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic); (vi) issue a notice of bankruptcy or winding down of its operations or issue a press release regarding same; or (vii) take any action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing;

(h) a proceeding or case shall be commenced in respect of the Maker or any of its Private Subsidiaries or any other Obligor, without its application or consent, in any court of competent jurisdiction, seeking: (i) the liquidation, reorganization, moratorium, dissolution, winding up, or composition or readjustment of its debts; (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets in connection with the liquidation or dissolution of the Maker or any of its Private Subsidiaries or any other Obligor; or (iii) similar relief in respect of it under any law providing for the relief of debtors, and such proceeding or case described in clause (i), (ii) or (iii) shall continue undismissed, or unstayed and in effect, for a period of forty-five (45) days or any order for relief shall be entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect) or under the comparable laws of any jurisdiction (foreign or domestic) against the Maker or any of its Private Subsidiaries or any other Obligor or action under the laws of any jurisdiction (foreign or domestic) analogous to any of the foregoing shall be taken with respect to the Maker or any of its Private Subsidiaries or any other Obligor and shall continue undismissed, or unstayed and in effect for a period of forty-five (45) days;

(i) one or more final judgments or orders for the payment of money aggregating in excess of $200,000 (or its equivalent in the relevant currency of payment) are rendered against one or more of the Company and its Private Subsidiaries or any other Obligor;

(j) [Reserved];

(k) the Maker's Class A Common Stock are no longer publicly traded or cease to be listed on the Trading Market or, after the six month anniversary of the Issuance Date, any Warrant Shares may not be immediately resold under Rule 144 without restriction on the number of shares to be sold or manner of sale, unless such Warrant Shares have been registered for resale under the 1933 Act and may be sold without restriction;

(l) the Company ceases to be a "reporting issuer" under the Exchange Act, or applies to do so, in either case without the prior written consent of the Holder;

(m) there shall be any SEC or judicial stop trade order or trading suspension stop-order or management cease trade order or any restriction (collectively, a "**Restriction**") in place with the transfer agent for the Class A Common Stock restricting the trading of such Class A Common Stock and such Restriction shall not have been lifted within ten (10) Business Days of its imposition;

(n) the Class A Common Stock are no longer tradeable through the Depository Trust Company Fast Automated Securities Transfer program;

(o) [Reserved]; or

(p) the occurrence of a Material Adverse Effect in respect of the Maker, or the Maker and its Private Subsidiaries and any other Obligor taken as a whole and any such occurrence is not remedied within ten (10) Business Days from the Event of Default occurring by the Company's failure to comply with this Section 2.1(p).

2.2 Remedies Upon an Event of Default.

(a) Upon the occurrence of any Event of Default, interest will be payable on the Note at a rate equal to the greater of: (i) twenty-four percent (24%) per annum; and (ii) the maximum rate permitted by applicable law ("**Interest Upon Default Amount**"). Such interest will accrue from the first date of the Event of Default on the outstanding Principal Amount, for as long as the Event of Default will not have been remedied. The Maker must pay this amount of interest on the outstanding Principal Amount to the Investor on a monthly basis in arrears on the last day of each calendar month following Event of Default.

(b) Upon the occurrence of any Event of Default, the Maker shall, as promptly as possible but in any event within one (1) Business Day of such Event of Default, notify the Holder of the occurrence of such Event of Default, describing the event or factual situation giving rise to the Event of Default and specifying the relevant subsection or subsections of Section 2.1 hereof under which such Event of Default has occurred.

(c) Upon the occurrence and during the continuance of an Event of Default, the Holder may at any time at its option (1) declare that the Interest Upon Default Amount has become applicable, without presentment, demand, protest or notice, all of which are hereby expressly unconditionally and irrevocably waived by the Maker and (2) exercise all other rights and remedies available to it under the Transaction Documents; *provided, however*, that upon the occurrence of an Event of Default described above, the Holder, in its sole and absolute discretion, may exercise or otherwise enforce any one or more of the Holder's rights, powers, privileges, remedies and interests under this Note, the Purchase Agreement, the other Transaction Documents or applicable law. No course of delay on the part of the Holder shall operate as a waiver thereof or otherwise prejudice the rights of the Holder. No remedy conferred hereby shall be exclusive of any other remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

ARTICLE 3

3.1 Covenants. For so long as any Note is outstanding, without the prior written consent of the Holder:

(a) Compliance with Transaction Documents. The Maker shall, and shall cause its Private Subsidiaries and each other Obligor to, comply with its obligations under this Note and the other Transaction Documents.

(b) Payment of Taxes, Etc. The Maker shall, and shall cause each of its Private Subsidiaries and each other Obligor to, promptly pay and discharge, or cause to be paid and discharged, when due and payable, all lawful taxes, assessments and governmental charges or levies imposed upon the income, profits, property or business of the Maker and the Private Subsidiaries and each other Obligor, except for such failures to pay that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect; *provided, however*, that any such tax, assessment, charge or levy need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the Maker or such Private Subsidiaries and each other Obligor shall have set aside on its books adequate reserves with respect thereto, and *provided, further*, that the Maker and such Private Subsidiaries will pay all such taxes, assessments, charges or levies forthwith upon the commencement of proceedings to foreclose any lien which may have attached as security therefor.

(c) Corporate Existence. The Maker shall, and shall cause each of its Private Subsidiaries to, maintain in full force and effect its corporate existence, rights and franchises and all licenses and other rights to use property owned or possessed by it and reasonably deemed to be necessary to the conduct of its business.

(d) Investment Company Act. The Maker shall conduct its businesses in a manner so that it will not become subject to, or required to be registered under, the Investment Company Act of 1940, as amended.

(e) Sale of Collateral; Liens. From the date hereof until the full release of the security interest in the Collateral, (i) the Maker and its Private Subsidiaries shall not sell, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so, other than sales of inventory in the ordinary course of business consistent with past practices; and (ii) the Maker and its Private Subsidiaries shall not, directly or indirectly, create, permit or suffer to exist, and shall defend the Collateral against and take such other action as is necessary to remove, any lien, security interest or other encumbrance on the Collateral.

(f) Repayment of This Note. The Company shall make weekly payments to the Investors on a *pari passu* basis equal to the net proceeds, if any, generated from the sale of marketable securities by Ault Lending, LLC including, without limitation, the Mullen Securities (as defined in the Security Agreement). The Company shall make payments to the Investors equal to eighty percent (80%) of the net proceeds generated from the sale of Capital Stock, but excluding the sale of Capital Stock from at-the-market transactions. Other than as set forth on Schedule 5.7 of the Purchase Agreement, the Company has no outstanding Indebtedness (all such Indebtedness set forth on Schedule 5.7 of the Purchase Agreement is hereinafter referred to as the "**Existing Debt**" and is collectively referred to herein as the "**Permitted Indebtedness**"). The Company shall not make any voluntary cash prepayments on any Indebtedness at any time while any amounts are owing under the Note other than with respect to the Existing Debt or cash payments the Company is required to make pursuant to the express terms thereof existing on the date hereof. Neither the Company nor any Private Subsidiary shall incur any Indebtedness without the express written consent of the Investor. If the Company or any Private Subsidiary issues any Indebtedness other than the Permitted Indebtedness, after obtaining the written consent of the Investor pursuant to Section 1.9 of this Note, including any subordinated Indebtedness or convertible Indebtedness, other than Exempted Securities, then unless otherwise waived in writing by and at the discretion of the Investor, the Company will immediately utilize no less than sixty-five percent (65%) of the proceeds of such issuance (or cause such Private Subsidiary to immediately utilize the proceeds of such issuance) to repay the Note. Any such repayments of the Note as provided herein shall be made to the Investors on a *pro rata* basis in proportion to their investment and shall be without premium or penalty to the Company.

(g) Sale of Property. To the extent that the Company sells that certain real property identified on Schedule 5.8(b) of the Purchase Agreement (the "**Designated Property**"), the net proceeds from the sale of the Designated Property in excess of $10,000,000 shall be used by the Company to repay the Notes and such amount shall immediately become due and payable under the Notes.

3.2 Set-Off. This Note shall be subject to the set-off provisions set forth in the Purchase Agreement.

ARTICLE 4

4.1 [Reserved.]

4.2 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 4.2 prior to 5:00 p.m. (New York time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 4.2 on a day that is not a Business Day or later than 5:00 p.m. (New York time) on any date and earlier than 11:59 p.m. (New York time) on such date, (c) the Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses for notice shall be as set forth in the Purchase Agreement.

4.3 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without reference to principles of conflict of laws or choice of laws. This Note shall not be interpreted or construed with any presumption against the party causing this Note to be drafted.

4.4 Headings. Article and section headings in this Note are included herein for purposes of convenience of reference only and shall not constitute a part of this Note for any other purpose.

4.5 Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief), no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Maker to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Maker (or the performance thereof). The Maker acknowledges that a breach by it of its obligations hereunder will cause irreparable and material harm to the Holder and that the remedy at law for any such breach would be inadequate. Therefore, the Maker agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available rights and remedies, at law or in equity, to equitable relief, including but not limited to an injunction restraining any such breach or threatened breach, without the necessity of showing economic loss and without any bond or other security being required.

4.6 Enforcement Expenses. The Maker agrees to pay all costs and expenses of enforcement of this Note, including, without limitation, reasonable attorneys' fees and expenses.

4.7 Binding Effect. The obligations of the Maker and the Holder set forth herein shall be binding upon the successors and assigns of each such party, whether or not such successors or assigns are permitted by the terms herein.

4.8 Amendments; Waivers. No provision of this Note may be waived or amended except in a written instrument signed by the Company and the Holder. No waiver of any default with respect to any provision, condition or requirement of this Note shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

4.9 Compliance with Securities Laws. The Holder of this Note acknowledges that this Note is being acquired solely for the Holder's own account and not as a nominee for any other party, and for investment, and that the Holder shall not offer, sell or otherwise dispose of this Note in violation of securities laws. This Note and any note issued in substitution or replacement therefor shall be stamped or imprinted with a legend in substantially the following form:

> "THIS NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY."

4.10 Jurisdiction; Venue. Any action, proceeding or claim arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York. The Company and the Holder irrevocably submit to the jurisdiction of such courts, which jurisdiction shall be exclusive, and hereby waive any objection to such exclusive jurisdiction or that such courts represent an inconvenient forum. The prevailing party in any such action shall be entitled to recover its reasonable and documented attorneys' fees and out- of-pocket expenses relating to such action or proceeding.

4.11 Parties in Interest. This Note shall be binding upon, inure to the benefit of and be enforceable by the Maker, the Holder and their respective successors and permitted assigns.

4.12 Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

4.13 Maker Waivers. Except as otherwise specifically provided herein, the Maker and all others that may become liable for all or any part of the obligations evidenced by this Note hereby waive presentment, demand, notice of nonpayment, protest and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and do hereby consent to any number of renewals of extensions of the time or payment hereof and agree that any such renewals or extensions may be made without notice to any such persons and without affecting their liability herein and do further consent to the release of any person liable hereon, all without affecting the liability of the other persons, firms or Maker liable for the payment of this Note, AND DO HEREBY WAIVE TRIAL BY JURY.

(a) No delay or omission on the part of the Holder in exercising its rights under this Note, or course of conduct relating hereto, shall operate as a waiver of such rights or any other right of the Holder, nor shall any waiver by the Holder of any such right or rights on any one occasion be deemed a waiver of the same right or rights on any future occasion.

(b) THE MAKER ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS NOTE IS A PART IS A COMMERCIAL TRANSACTION, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE HOLDER OR ITS SUCCESSORS OR ASSIGNS MAY DESIRE TO USE.

4.14 Definitions. Capitalized terms used herein and not defined shall have the meanings set forth in the Purchase Agreement. For the purposes hereof, the following terms shall have the following meanings:

(a) "Indebtedness" means: (a) all obligations for borrowed money; (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, current swap agreements, interest rate hedging agreements, interest rate swaps, or other financial products; (c) all capital lease obligations that exceed $150,000 in the aggregate in any fiscal year; (d) all obligations or liabilities secured by a lien or encumbrance on any asset of the Maker or any Private Subsidiary, irrespective of whether such obligation or liability is assumed; (e) all obligations for the deferred purchase price of assets, together with trade debt and other accounts payable that exceed $150,000 in the aggregate in any fiscal year; (f) all synthetic leases; and (g) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse) any of the foregoing obligations of any other person.

(b) "Market Capitalization" means, as of any date of determination, the product of (a) the number of issued and outstanding Common Shares as of such date (exclusive of any Common Shares issuable upon the exercise of options or warrants or conversion of any convertible securities), multiplied by (b) the closing price of the Common Shares on the Trading Market on the date of determination.

(c) "Outstanding Balance" means, at the time of determination, the Principal Amount outstanding plus all accrued but unpaid interest thereon (if any) after giving effect to any conversions or prepayments pursuant to the terms hereof.

[Signature Pages Follow]

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

BITNILE HOLDINGS, INC.

By: _____
Name: William B. Horne
Title: Chief Executive Officer

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (as amended, supplemented, restated and/or modified from time to time, this "**Agreement**") is entered into as of December 16, 2022, by and among BitNile Holdings, Inc., a Delaware corporation (and, unless the context requires otherwise, collectively with the "**Subsidiaries**" referred to below, the "**Company**"), and each investor identified on the signature page hereto (each, including its successors and assigns, the "**Investor**").

BACKGROUND

A. The board of directors (the "**Board of Directors**") of the Company has authorized the issuance to Investor of the Note (as defined below).

B. The Investor desires to purchase the Note (as defined below) on the terms and conditions set forth in this Agreement.

C. Concurrently with the execution of this Agreement, the Company, certain of its Subsidiaries and Affiliates and the Investor will enter into certain security agreements and guarantees, as listed in Exhibit A (the "**Security Documents**"), pursuant to which certain Subsidiaries and Affiliates will guarantee all of the Company's obligations under the Transaction Documents and the Company and certain of its Subsidiaries will grant a first priority security interest in certain assets to secure the Company's obligations hereunder and the Subsidiaries' obligations under any such guarantee.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings specified or indicated below, and such meanings shall be equally applicable to the singular and plural forms of such defined terms:

"**1933 Act**" means the Securities Act of 1933, as amended.

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

"**Acquisition**" means the acquisition by the Company or any direct or indirect Subsidiary of the Company of a majority of the Equity Interests or substantially all of the assets and business of any Person, whether by direct purchase of Equity Interests, asset purchase, merger, consolidation or like combination.

"**Affiliate**" means a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"**Agreement**" has the meaning set forth in the preamble.

"**Board of Directors**" has the meaning set forth in the recitals.

"**Business Day**" means any day other than a Saturday, Sunday or any other day on which banks are permitted or required to be closed in New York City.

"**Capital Stock**" means the Common Stock and any other classes of shares in the capital of the Company.

"**Change of Control**" means, with respect to the Company, on or after the date of this Agreement:

(a) a change in the composition of the Board of Directors of the Company at a single shareholder meeting where a majority of the individuals that were directors of the Company immediately prior to the start of such shareholder meeting are no longer directors at the conclusion of such meeting, without the prior written consent of a majority in interest of the Investors;

(b) a change, without the prior written consent of a majority in interest of the Investors, in the composition of the Board of Directors of the Company prior to the termination of this Agreement where a majority of the individuals that were directors as of the date of this Agreement cease to be directors of the Company prior to the termination of this Agreement;

(c) other than a shareholder that holds such a position at the date of this Agreement, if a Person comes to have beneficial ownership, control or direction over more than forty percent (40%) of the voting rights attached to any class of voting securities of the Company; or

(d) the sale or other disposition by the Company or any of its Subsidiaries in a single transaction, or in a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries on a consolidated basis.

"**Closing**" has the meaning set forth in Section 2.2.

"**Closing Date**" has the meaning set forth in Section 2.2.

"**Collateral Agent**" means Esousa Group Holdings, LLC as detailed in that certain Security Agreement, executed and delivered on the date hereof and in connection with the Agreement, by and between the Company and Esousa Group Holdings, LLC.

"**Class B Common Stock**" means the Class B Common Stock in the capital of the Company, each of which has $0.001 par value per share.

"**Common Stock**" means the Class A Common Stock in the capital of the Company, each of which has $0.001 par value per share.

"**Company**" has the meaning set forth in the preamble.

"**Equity Interests**" means and includes capital stock, membership interests and other similar equity securities, and shall also include equity-linked securities including, but not limited to, warrants or options to purchase capital stock, membership interests or other equity interests.

"**Event**" means any event, change, development, effect, condition, circumstance, matter, occurrence or state of facts.

"**Event of Default**" has the meaning set forth in Section 7.1.

"**Exempted Securities**" means (a) Common Stock or preferred shares or rights, warrants or options to purchase Common Stock or preferred shares issued in connection with any Acquisition where the Company does not receive cash proceeds therefrom, (b) equity securities issued by reason of a dividend, stock split, split-up or other distribution on Common Stock, (c) Common Stock or rights, warrants or options to purchase Common Stock issued to employees or directors of, or consultants or advisors to, the Company or any of its Subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors ("**Equity Plans**"), (d) Common Stock or rights, warrants or options to purchase Common Stock issued to third parties in connection with strategic partnerships approved by the Board of Directors, (e) Common Stock actually issued upon the exercise of options or warrants or Common Stock actually issued upon the conversion or exchange of any securities convertible into Common Stock, in each case provided that such issuance is pursuant to the terms of the applicable option, warrant or convertible security, or (f) Common Stock issued upon the exercise or conversion of options, warrants or convertible securities outstanding on the date hereof where the Company does not receive cash proceeds therefrom.

"**Funding Amount**" means an amount equal to Thirteen Million Five Hundred Thousand Dollars ($13,500,000), consisting of a cash payment of Twelve Million Dollars ($12,000,000) and a non-reimbursable expense allocation of One Million Five Hundred Thousand Dollars ($1,500,000).

"**Governmental Entity**" means any instrumentality, subdivision, court, administrative agency, department, body, bureau, division, board, committee, panel, commission, official or other authority of any country, state, province, prefect, municipality, locality or other government or political subdivision thereof, whether domestic or foreign, or any supranational or multinational organization or authority, or any quasi-governmental, private body or arbitral body exercising any executive, legislative, judicial, quasi-judicial, regulatory, taxing, importing, administrative or other governmental or quasi-governmental authority.

"**HSR Act**" has the meaning set forth in Section 5.15.

"**Indebtedness**" shall mean (a) all obligations for borrowed money; (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, current swap agreements, interest rate hedging agreements, interest rate swaps, or other financial products; (c) all capital lease obligations that exceed $100,000 in the aggregate in any fiscal year; (d) all obligations or liabilities secured by a lien or encumbrance on any asset of the Company or any Private Subsidiary, irrespective of whether such obligation or liability is assumed; (e) all obligations for the deferred purchase price of assets, together with trade debt and other accounts payable that exceed $100,000 in the aggregate in any fiscal year; (f) all synthetic leases; and (g) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse) any of the foregoing obligations of any other person.

"**Investor**" has the meaning set forth in the preamble.

"**Investor Group**" shall mean the Investor plus any other Person with which the Investor is considered to be part of a group under Section 13 of the 1934 Act or with which the Investor otherwise files reports under Sections 13 and/or 16 of the 1934 Act.

"**Investor Party**" has the meaning set forth in Section 5.11(a).

"**IP Rights**" has the meaning set forth in Section 3.10.

"**Law**" means any law, rule, regulation, order, judgment or decree, including, without limitation, any federal, and state securities laws.

"**Losses**" has the meaning set forth in Section 5.11(a).

"**Material Adverse Effect**" means any material adverse effect on (i) the businesses, properties, assets, prospects, operations, results of operations or financial condition of the Company, or the Company and the Subsidiaries, taken as a whole, or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement or to perform its obligations hereunder or under the Note; *provided, however*, that none of the following shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been or would be, a Material Adverse Effect: (a) any adverse effect resulting from or arising out of general economic or financial or capital markets or political conditions in the United States or in any other jurisdiction in which the Company has operations or conducts business to the extent, and only to the extent, the effects do not disproportionately affect the Company as compared to other participants in the industries in which the Company operates; (b) any adverse effect resulting from or arising out of general conditions in the industries in which the Company and the Subsidiaries operate; (c) any adverse effect resulting from any changes to applicable Law; or (d) any adverse effect resulting from or arising out of any natural disaster or any acts of terrorism, sabotage, military action or war or any escalation or worsening thereof; *provided*, *further*, that any event, occurrence, fact, condition or change referred to in clauses (a) through (d) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company and/or the Subsidiaries compared to other participants in the industries in which the Company and the Subsidiaries operate.

"**Money Laundering Laws**" has the meaning set forth in Section 3.25.

"**Note**" has the meaning set forth in Section 2.1.

"**Obligor**" means the Company and each of its Subsidiaries that are a signatory to any Transaction Document.

"**OFAC**" has the meaning set forth in Section 3.23.

"**Permitted Indebtedness**" shall have the meaning set forth in Section 5.7.

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

"**Principal Amount**" has the meaning set forth in Section 2.1.

"**Principal Market**" means the NYSE American, LLC.

"**Private Subsidiary**" means any Subsidiary of the Company other than a Public Subsidiary, as disclosed on Schedule 3.4.

"**Proceedings**" has the meaning set forth in Section 3.6.

"**Prohibited Transaction**" means a transaction with a third party or third parties in which the Company acquires any new assets other than in the ordinary course of business or (ii) acquires any businesses, in both cases other than the contemplated acquisition of the assets from Circle 8 Crane Services.

"**Public Record**" has the meaning set forth in Section 3.5(a).

"**Public Subsidiary**" means any Subsidiary of the Company that has a class of securities registered under Section 12 or 15 of the 1934 Act, or any Subsidiary of such entity, each as disclosed on Schedule 3.4.

"**Register**," "**Registered**" and "**Registration**" refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act, and the declaration or ordering of effectiveness of such Registration Statement or document.

"**Registration Statement**" means any registration statement of the Company filed under the 1933 Act, including amendments and supplements to such Registration Statement, and including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

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

"**Security Documents**" has the meaning set forth in the recitals.

"**Securities Termination Event**" means either of the following has occurred:

(a) trading in securities generally in the United States has been suspended or limited for a consecutive period of greater than three (3) Business Days; or

(b) a banking moratorium has been declared by the United States or the New York State authorities and is continuing for a consecutive period of greater than three (3) Business Days.

"**Security Agreement**" means that certain security agreement, executed and delivered on the date hereof and in connection with the Agreement, by and between the Company, Esousa Group Holdings, LLC and the other parties named therein.

"**Subsidiary**" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company.

"**Tax**" or "**Taxes**" means all federal United States and state, municipal, foreign and other taxes (including, without limitation, income taxes, sales taxes, excise taxes, value added taxes, capital taxes, property taxes, withholding taxes, payroll taxes and contributions, and production, severance and similar taxes and assessments) and includes all penalties, interest and fines with respect thereto and all liabilities for the payment of such amounts as a transferee or successor or under any obligation to indemnify another Person.

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

"**Trading Market**" means whichever of the New York Stock Exchange, NYSE American, or the Nasdaq Stock Market (including the Nasdaq Capital Market), on which the Common Stock is listed or quoted for trading on the date in question.

"**Transaction Documents**" means this Agreement, the Note, the Security Documents, and any other documents or agreements executed or delivered by any Obligor in connection with the transactions contemplated hereunder.

2. PURCHASE AND SALE OF THE NOTE.

2.1 Purchase and Sale of the Note. Subject to the terms and conditions set forth herein, at the Closing, the Company shall issue and sell to the Investors, and the Investors shall purchase from the Company, an original issuance discount senior secured promissory notes in the form attached hereto as Exhibit B (the "**Note**"), in the aggregate principal amount of Fourteen Million Seven Hundred Thousand Dollars ($14,700,000), subject to adjustment as set forth in the Note (the "**Principal Amount**") in exchange for the Funding Amount.

2.2 Closing. The closing hereunder, including payment for and delivery of the Note, shall take place remotely via the exchange of documents and signatures, no later than ten (10) Business Days following the execution and delivery of this Agreement, subject to satisfaction or waiver of the conditions set forth in Section 6, or at such other time and place as the Company and the Investor agree upon, orally or in writing (the "**Closing**," and the date of the Closing being the "**Closing Date**"). On the Closing Date, (i) the Investor shall pay the Funding Amount to the Company by wire transfer of immediately available funds in accordance with the Company's written wire instructions and (ii) the Company shall issue to the Investor a Note in the Principal Amount, duly executed on behalf of the Company and registered in the name of the Investor or its designee.

2.3 Repayment of the Note and Prepayment Right. As set forth in this Agreement and in the Note, the Company shall make certain payments to the Investor as detailed therein. Further, as set forth in the Note, in its sole discretion and upon giving the prior written notice set forth in the Note, the Company will have the right to pre-pay the entire then-outstanding principal amount of the Note at any time with no penalty or premium of any kind.

2.4 Senior Obligation. As an inducement for the Investors to enter into this Agreement and to purchase the Notes, all obligations of the Obligors pursuant to the Transaction Documents shall be secured by a security interest in and lien upon certain assets of the Obligors as set forth in the Security Agreement.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants to the Investor and covenants with the Investor that, except as is set forth in the Disclosure Letter being delivered to the Investor as of the date hereof and as of the Closing Date, the following representations and warranties are true and correct in all material respects:

3.1 Organization and Qualification. The Company is a corporation duly organized and validly existing in good standing under the Laws of the State of Delaware and has the requisite corporate power and authority to own its properties and to carry on its business as now being conducted. The Company is duly qualified to do business and is in good standing in every jurisdiction in which the ownership of its property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect.

3.2 Authorization; Enforcement; Compliance with Other Instruments. The Company and each of its Subsidiaries (as applicable) has the requisite corporate or limited liability company power, as the case may be, and authority to execute the Transaction Documents to which it is a party, to issue and sell the Note hereto (in the case of the Company), and to perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of the Transaction Documents by the Company and its Subsidiaries (as applicable) and the issuance and sale of the Note by the Company pursuant hereto, have been duly and validly authorized by the Company's Executive Committee of its Board of Directors and any similar governing body of a Subsidiary and no further consent or authorization is required by the Company, its Subsidiaries, their respective Boards of Directors or other governing bodies, the Company's stockholders or any other Person in connection therewith. The Transaction Documents have been duly and validly executed and delivered by the Company and its Subsidiaries party thereto and constitute valid and binding obligations of the Company and its Subsidiaries (as applicable), enforceable against such parties in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar Laws relating to, or affecting generally, the enforcement of creditors' rights and remedies.

3.3 No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and its Subsidiaries (as applicable) and the issuance and sale of the Note by the Company hereunder will not (a) conflict with or result in a violation of the Company's or its Subsidiaries' notice of articles, articles or any other constating documents, (b) conflict with, or constitute a default (or an event which, with notice or lapse of time or both, would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, any agreement to which the Company or any of the Subsidiaries is a party, or require the Company or any Subsidiary to grant a lien or encumbrance on any of its property or assets under the terms of any other agreement to which it is a party, or (c) subject to the making of the filings referred to in Section 5, violate in any material respect any Law or any rule or regulation of the Principal Market applicable to the Company or any of the Subsidiaries or by which any of their properties or assets are bound or affected. Assuming the accuracy of the Investor's representations in Section 4 and subject to the making of the filings referred to in Section 5, (i) no approval or authorization will be required from any governmental authority or agency, regulatory or self-regulatory agency or other third party (including the Principal Market) in connection with the issuance of the Note and the other transactions contemplated by this Agreement and (ii) the issuance of the Note will be exempt from the registration and qualification requirements under the 1933 Act and all applicable state securities Laws.

3.4 Capitalization and Subsidiaries.

(a) The authorized Capital Stock of the Company consists of Five Hundred Million shares of Class A Common Stock, Twenty-Five Million shares of Class B Common Stock and Twenty-Five Million shares of Preferred Stock. As of the close of business on December 15, 2022, 365,525,189 shares of Common Stock, no shares of Class B Common Stock and 300,130 shares of Preferred Stock were issued and outstanding. As of December 15, 2022, (x) an aggregate of 5,810,844 shares of Common Stock are issuable upon exercise of options granted under a stock option plan, of which 2,538,790 are fully vested and exercisable; (y) an aggregate of 27,560,0021 Common Stock are issuable upon exercise of outstanding warrants granted by the Company, with exercise prices ranging from $0.45 to $2,000 per share and (Z) an aggregate of 1,505,000 restricted stock grants are outstanding. No shares of the Company's Capital Stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company. The Company's certificate of incorporation and bylaws, each as amended, on file on the SEC's EDGAR website are true and correct copies of the Company's constating documents as in effect as of the date hereof. The Company is not in violation of any provision of its certificate of incorporation or bylaws.

(b) Schedule 3.4(b) lists each direct and indirect Subsidiary of the Company existing on the date hereof and indicates for each Private Subsidiary (i) the authorized capital stock or other Equity Interests of such Private Subsidiary as of the date hereof, (ii) the number and kind of shares or other ownership interests of such Private Subsidiary that are issued and outstanding as of the date hereof, and (iii) the owner of such shares or other ownership interests. Other than as set forth on Schedule 3.4(b), no Private Subsidiary has any outstanding stock options, warrants or other instruments pursuant to which such Private Subsidiary may at any time or under any circumstances be obligated to issue any shares of its capital stock or other Equity Interests. Each Subsidiary is duly organized and validly existing in good standing under the laws of its jurisdiction of formation and has all requisite power and authority to own its properties and to carry on its business as now being conducted.

(c) Neither the Company nor any Private Subsidiary is bound by any agreement or arrangement pursuant to which it is obligated to register the sale of any securities under the 1933 Act other than _____. There are no outstanding securities of the Company or any of the Private Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Private Subsidiary is or may become bound to redeem or purchase any security of the Company or any Private Subsidiary.

There are no outstanding securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Note. Neither the Company nor any Private Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(d) The issuance and sale of the Note on the Closing Date will not obligate the Company to issue shares of Common Stock or other securities to any other Person and will not result in the adjustment of the exercise, conversion, exchange, or reset price of any outstanding securities.

3.5 Public Record; Financial Statements.

(a) As of the date hereof, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**Public Record**"). As of their respective filing dates, all documents filed by the Company in the Public Record complied in all material respects with the requirements of the 1934 Act, as applicable, and the rules and regulations thereunder, and none of the documents in the Public Record, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) As of their respective dates, the financial statements of the Company included in the Public Record complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the 1934 Act with respect thereto. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("**GAAP**"), and audited by a firm that is an independent registered public accounting firm subject to the public company accounting oversight board consistently applied, during the periods involved (except as may be otherwise indicated in such financial statements or the notes thereto, or, in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company as of the dates thereof and the consolidated results of its operations and consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). No other written information provided by or on behalf of the Company to the Investor in connection with the Investor's purchase of the Note which is not included in the Public Record contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstance under which they are or were made, not misleading.

(c) Except as set forth on Schedule 3.5(c), the Company and each of the Private Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) reasonable controls to safeguard assets are in place and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.6 Litigation and Regulatory Proceedings. Other than as set forth on Schedule 3.6, there are no material actions, causes of action, suits, claims, proceedings, inquiries or investigations (collectively, "**Proceedings**") before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the executive officers of the Company or any of the Private Subsidiaries, threatened against or affecting the Company or any of the Private Subsidiaries, the Common Stock or any other class of issued and outstanding shares of the Company's Capital Stock, or any of the Company's or the Private Subsidiaries' officers or directors in their capacities as such and, to the knowledge of the Company, there is no reason to believe that there is any basis for any such Proceeding.

3.7 No Undisclosed Events, Liabilities or Developments. Other than as set forth on Schedule 3.7 hereto, no event, development or circumstance has occurred or exists, or to the knowledge of the Company, is reasonably anticipated to occur or exist that (a) would reasonably be anticipated to have a Material Adverse Effect or (b) would be required to be disclosed by the Company under applicable securities Laws on a Registration Statement relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced.

3.8 Compliance with Law. The Company and each of the Private Subsidiaries have conducted and are conducting their respective businesses in compliance in all material respects with all applicable Laws and are in compliance in all material respects with the rules and regulations of the Trading Market. Except as disclosed in the Public Record, the Company is not aware of any facts which could reasonably be anticipated to lead to a delisting of the Common Stock by the Trading Market in the future.

3.9 Employee Relations. Neither the Company nor any Private Subsidiary is involved in any union labor dispute nor, to the knowledge of the Company, is any such dispute threatened. Neither the Company nor any Private Subsidiary is a party to any collective bargaining agreement. No executive officer has notified the Company that such officer intends to leave the Company's employ or otherwise terminate such officer's employment with the Company.

3.10 Intellectual Property Rights. The Company and each Private Subsidiary owns or possesses adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights (collectively, "**IP Rights**") necessary to conduct their respective businesses as now conducted. None of the material IP Rights of the Company or any of the Private Subsidiaries are expected to expire or terminate within three (3) years from the date of this Agreement. Neither the Company nor any Private Subsidiary is infringing, misappropriating or otherwise violating any IP Rights of any other Person. No claim has been asserted, and no Proceeding is pending, against the Company or any Private Subsidiary alleging that the Company or any Private Subsidiary is infringing, misappropriating or otherwise violating the IP Rights of any other Person, and, to the Company's knowledge, no such claim or Proceeding is threatened, and the Company is not aware of any facts or circumstances which might give rise to any such claim or Proceeding. The Company and the Private Subsidiaries have taken commercially reasonable security measures to protect the secrecy, confidentiality and value of all of their material IP Rights.

3.11 Environmental Laws. Except, in each case, as would not be reasonably anticipated to have a Material Adverse Effect, the Company and the Private Subsidiaries (a) are in compliance in all material respects with any and all applicable Laws relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants, (b) have received and hold all permits, licenses or other approvals required of them under all such Laws to conduct their respective businesses and (c) are in compliance in all material respects with all terms and conditions of any such permit, license or approval.

3.12 Title to Assets. The Company and the Private Subsidiaries have good and marketable title to all personal property owned by them which is material to their respective businesses, in each case free and clear of all liens, encumbrances and defects except those disclosed in the Public Record or set forth on Schedule 3.12. Any real property and facilities held under lease by the Company or any Private Subsidiary are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and the Private Subsidiaries.

3.13 Insurance. The Company and each of the Private Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company reasonably believes to be prudent and customary in the businesses in which the Company and the Private Subsidiaries are engaged. Neither the Company nor any of the Private Subsidiaries has been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will not be able to renew all existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers.

3.14 Regulatory Permits. The Company and the Private Subsidiaries have in full force and effect all certificates, approvals, authorizations and permits from all regulatory authorities and agencies necessary to own, lease or operate their respective properties and assets and conduct their respective businesses, and neither the Company nor any Private Subsidiary has received any notice of Proceedings relating to the revocation or modification of any such certificate, approval, authorization or permit, except for such certificates, approvals, authorizations or permits with respect to which the failure to hold would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.15 No Materially Adverse Contracts, Etc. Neither the Company nor any of the Private Subsidiaries is (a) subject to any charter, corporate or other legal restriction, or any judgment, decree or order which in the judgment of the Company has or is expected in the future to have a Material Adverse Effect or (b) a party to any contract or agreement which in the judgment of the Company has or would reasonably be anticipated to have a Material Adverse Effect.

3.16 Taxes. The Company and the Private Subsidiaries each has correctly prepared and duly and timely made or filed, or caused to be made or filed, all United States federal, and applicable state, local and non-U.S. Tax returns, reports and declarations required by any jurisdiction to which it is subject and has paid all Taxes and other governmental assessments and charges that are material in amount, required to be paid by it, regardless of whether such amounts are shown or determined to be due on such returns, reports and declarations, except those being contested in good faith by appropriate proceedings and for which it has set aside on its books provision reasonably adequate for the payment of all Taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid Taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and, to the knowledge of the Company, there is no basis for any such claim. Each of the Company and the Private Subsidiaries has collected, withheld and remitted all Taxes due and payable to the property taxing or other governmental authority. There are no audits, assessments, reassessments, suits, proceedings, investigations or claims pending against the Company or any of the Private Subsidiaries in respect of Taxes paid or payable, and there are no matters under discussion with any taxing or governmental authority of any jurisdiction involving the Company or any Private Subsidiary with, or the subject of any agreement with, any taxing or governmental authority relating to claims for additional Taxes. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment or reassessment of any Tax owing by the Company or any subsidiary, the filing of any tax returns by the Company or any Private Subsidiary or the payment of any Tax by the Company or any Private Subsidiary.

3.17 Solvency. After giving effect to the receipt by the Company of the proceeds from the transactions contemplated by this Agreement (a) the Company's fair saleable value of its assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature; and (b) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its debt when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction.

3.18 Investment Company. The Company is not, and is not an Affiliate of, an "Investment Company" within the meaning of the Investment Company Act of 1940, as amended.

3.19 Certain Transactions. Other than employment or consultant agreements or as disclosed in the Public Record, there are no contracts, transactions, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and any director, officer or employee thereof on the other hand.

3.20 No General Solicitation. Neither the Company, nor any of its Affiliates, nor any person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Note pursuant to this Agreement.

3.21 Acknowledgment Regarding the Investor's Purchase of the Note. The Company's Executive Committee of its Board of Directors has approved the execution of the Transaction Documents and the issuance and sale of the Note, based on its own independent evaluation and determination that the terms of the Transaction Documents are reasonable and fair to the Company and in the best interests of the Company and its stockholders. The Company and each of its Subsidiaries (as applicable) are entering into this Agreement and the Security Documents to which they are party, and the Company is issuing and selling the Note, voluntarily and without economic duress. The Company has had the opportunity to consider whether or not to retain independent legal counsel of its own choosing to review the Transaction Documents and advise the Company with respect thereto but has determined not to retain any such independent legal counsel. The Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length purchaser with respect to the Note and the transactions contemplated hereby and that neither the Investor nor any person affiliated with the Investor is acting as a financial advisor to, or a fiduciary of, the Company (or in any similar capacity) with respect to execution of the Transaction Documents or the issuance of the Note or any other transaction contemplated hereby.

3.22 No Brokers', Finders' or Other Advisory Fees or Commissions. No brokers, finders or other similar advisory fees or commissions will be payable by the Company or any Subsidiary or by any of their respective agents with respect to the issuance of the Note or any of the other transactions contemplated by this Agreement.

3.23 OFAC. None of the Company nor any of the Private Subsidiaries nor, to the best knowledge of the Company, any Public Subsidiary or director, officer, agent, employee, affiliate or person acting on behalf of the Company and/or any Subsidiary has been or is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Department of the Treasury ("**OFAC**"); and the Company will not directly or indirectly use any proceeds received from the Investor, or lend, contribute or otherwise make available such proceeds to its Subsidiaries or to any affiliated entity, joint venture partner or other person or entity, to finance any investments in, or make any payments to, any country or person currently subject to any of the sanctions of the United States administered by OFAC.

3.24 No Foreign Corrupt Practices. None of the Company or any of the Private Subsidiaries has, directly or indirectly: (a) made or authorized any contribution, payment or gift of funds or property to any official, employee or agent of any governmental authority of any jurisdiction except as otherwise permitted under applicable Law; or (b) made any contribution to any candidate for public office, in either case, where either the payment or the purpose of such contribution, payment or gift was, is, or would be prohibited under the Foreign Corrupt Practices Act or the rules and regulations promulgated thereunder or under any other legislation of any relevant jurisdiction covering a similar subject matter applicable to the Company or its Private Subsidiaries and their respective operations and the Company has instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with such legislation.

3.25 Anti-Money Laundering. The operations of each of the Company and the Private Subsidiaries are and have been conducted at all times in compliance with all applicable anti-money laundering laws, regulations, rules and guidelines in its jurisdiction of incorporation and in each other jurisdiction in which such entity, as the case may be, conducts business (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental authority involving the Company or its Subsidiaries with respect to any of the Money Laundering Laws is, to the best knowledge of the Company, pending, threatened or contemplated.

3.26 Disclosure. The Company confirms that neither it, nor to its knowledge, any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that the Company believes constitutes material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representations and covenants in effecting transactions in securities of the Company. All disclosures provided to the Investor regarding the Company, its business and the transactions contemplated hereby, furnished by or on behalf of the Company (including the Company's representations and warranties set forth in this Agreement) are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

3.27 Share Transfer Agent. The Company represents and warrants that the transfer agent used by the Company is Computershare Trust Company, N.A., which participates in the Depository Trust Company Fast Automated Securities Transfer program. The Company shall not change its share transfer agent without the prior written consent of the majority in interest of the Investors.

4. REPRESENTATIONS AND WARRANTIES OF THE INVESTOR. The Investor represents and warrants to the Company as follows:

4.1 Organization and Qualification. The Investor, if an entity, is a validly existing corporation, limited partnership or limited liability company and has all requisite corporate, partnership or limited liability company power and authority to invest in the Note pursuant to this Agreement.

4.2 Authorization; Enforcement; Compliance with Other Instruments. The Investor has the requisite power and authority to enter into and to perform its obligations under the Transaction Documents to which it is a party. The execution and delivery by the Investor of the Transaction Documents to which it is a party have been duly and validly authorized by the Investor's governing body and no further consent or authorization is required. The Transaction Documents to which it is a party have been duly and validly executed and delivered by the Investor and constitute valid and binding obligations of the Investor, enforceable against the Investor in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies.

4.3 No Conflicts. The execution, delivery and performance of the Transaction Documents to which it is a party by the Investor and the purchase of the Note by the Investor will not (a) conflict with or result in a violation of the Investor's organizational documents, (b) conflict with, or constitute a material default (or an event which, with notice or lapse of time or both, would become a material default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, contract, indenture mortgage, indebtedness or instrument to which the Investor is a party, or (c) violate any Law applicable to the Investor or by which any of the Investor's properties or assets are bound or affected. No approval or authorization will be required from any governmental authority or agency, regulatory or self-regulatory agency or other third party in connection with the purchase of the Note and the other transactions contemplated by this Agreement.

4.4 Investment Intent; Accredited Investor. The Investor is purchasing the Note for its own account, for investment purposes, and not with a view towards distribution. The Investor is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D of the 1933 Act. The Investor has, by reason of its business and financial experience, such knowledge, sophistication and experience in financial and business matters and in making investment decisions of this type that it is capable of (a) evaluating the merits and risks of an investment in the Note and making an informed investment decision, (b) protecting its own interests and (c) bearing the economic risk of such investment for an indefinite period of time.

4.5 Opportunity to Discuss. The Investor has received all materials relating to the business, finance and operations of the Company and the Subsidiaries as it has requested and has had an opportunity to discuss the business, management and financial affairs of the Company and the Subsidiaries with the Company's management. In making its investment decision, the Investor has relied solely on its own due diligence performed on the Company by its own representatives.

4.6 No Governmental Review. The Investor understands that no Government Entity has passed on or made any recommendation or endorsement of the Note or the fairness or suitability of the investment in the Note nor have such authorities passed upon or endorsed the merits of the offering of the Note.

4.7 Reserved.

4.8 No Other Representations. Except for the representations and warranties set forth in this Agreement and in other Transaction Documents, the Investor makes no other representations or warranties to the Company.

5. OTHER AGREEMENTS OF THE PARTIES.

5.1 Legends, etc.

(a) The Note may only be disposed of pursuant to an effective Registration Statement, to the Company or pursuant to an available exemption from or in a transaction not subject to the registration requirements of the 1933 Act, and in compliance with any applicable state securities laws.

(b) Certificates evidencing the Note will contain the following legend, so long as is required by this Section 5.1(b):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that the Investor may from time to time pledge, and/or grant a security interest in some or all of the Note, in accordance with applicable securities laws, pursuant to a bona fide margin agreement in connection with a bona fide margin account and, if required under the terms of such agreement or account, the Investor may transfer pledged or secured Note to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion may be required in connection with a subsequent transfer following default by the Investor transferee of the pledge. At the Company's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of the Note may reasonably request in connection with a pledge or transfer of the Note including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the 1933 Act or other applicable provision of the 1933 Act to appropriately amend the list of selling stockholders thereunder.

5.2 Furnishing of Information. As long as the Investor owns the Note, the Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the 1934 Act.

5.3 Integration. The Company shall not, and shall use its best efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that will be integrated with the offer or sale of the Note in a manner that would require the registration under the 1933 Act.

5.4 Notification of Certain Events. The Company shall give prompt written notice to the Investor of (a) the occurrence or non-occurrence of any Event, the occurrence or non- occurrence of which would render any representation or warranty of the Company contained in this Agreement or any other Transaction Document, if made on or immediately following the date of such Event, untrue or inaccurate in any material respect, (b) the occurrence of any Event that, individually or in combination with any other Events, has had or could reasonably be expected to have a Material Adverse Effect, (c) any failure of the Company to comply with or satisfy any covenant or agreement to be complied with or satisfied by it hereunder or any Event that would otherwise result in the nonfulfillment of any of the conditions to the Investor's obligations hereunder, (d) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the transactions contemplated by this Agreement or any other Transaction Document, or (e) any Proceeding pending or, to the Company's knowledge, threatened against a party relating to the transactions contemplated by this Agreement or any other Transaction Document.

5.5 Reserved.

5.6 Use of Proceeds. The Company will use the proceeds from the sale of the Note as provided for herein for certain acquisitions which have been disclosed to the Investor and general working capital purposes.

5.7 Repayment of Note. The Company shall make weekly payments to the Investors on a *pari passu* basis equal to the net proceeds, if any, generated from the sale of marketable securities by Ault Lending, LLC. The Company shall make payments to the Investors equal to eighty percent (80%) of the net proceeds generated from the sale of Capital Stock, but excluding the sale of Capital Stock from at-the-market transactions. Other than as set forth on Schedule 5.7, the Company has no outstanding Indebtedness (all such Indebtedness set forth on Schedule 5.7 is hereinafter referred to as the "**Existing Debt**" and is collectively referred to herein as the "**Permitted Indebtedness**"). The Company shall not make any voluntary cash prepayments on any Indebtedness at any time while any amounts are owing under the Note other than with respect to the Existing Debt or cash payments the Company is required to make pursuant to the express terms thereof existing on the date hereof. Neither the Company nor any Private Subsidiary shall incur any Indebtedness without the express written consent of the Investor. If the Company or any Private Subsidiary issues any Indebtedness other than the Permitted Indebtedness, after obtaining the written consent of the Investor pursuant to Section 1.9 of the Note, including any subordinated Indebtedness or convertible Indebtedness, other than Exempted Securities, then unless otherwise waived in writing by and at the discretion of the Investor, the Company will immediately utilize no less than sixty-five percent (65%) of the proceeds of such issuance (or cause such Private Subsidiary to immediately utilize the proceeds of such issuance) to repay the Note. Any such repayments of the Note as provided in this Section 5.7 shall be made to the Investors on a *pro rata* basis in proportion to their investment and shall be without premium or penalty to the Company.

5.8 Sale of Property. To the extent that the Company sells that certain real property identified on Schedule 5.8(b) (the "**Designated Property**"), the net proceeds from the sale of the Designated Property in excess of $10,000,000 shall be used by the Company to repay the Notes and such amount shall immediately become due and payable under the Notes.

5.9 Prohibited Transactions. The Company hereby covenants and agrees not to enter into any Prohibited Transactions without obtaining prior written consent from the majority in interest of the Investors, until such time as the Note has been repaid in full.

5.10 Securities Laws Disclosure; Publicity. The Company shall, within one (1) Business Day following the date hereof, file a Current Report on Form 8-K disclosing the material terms of the transactions contemplated hereby and file a copy of this Agreement on EDGAR. The Company shall not issue any press release nor otherwise make any such public statement regarding the Investor or the Transaction Documents without the prior written consent of the Investor, except if such disclosure is required by law, in which case the Company shall (a) ensure that such disclosure is restricted and limited in content and scope to the maximum extent permitted by Law to meet the relevant disclosure requirement and (b) provide a copy of the proposed disclosure to the Investor for review prior to release and the Company shall incorporate the Investor's reasonable comments. Notwithstanding anything herein to the contrary, to comply with United States Treasury Regulations Section 1.6011-4(b)(3)(i), each of the Company and the Investor, and each employee, representative or other agent of the Company or the Investor, may disclose to any and all persons, without limitation of any kind, the U.S. federal and state income tax treatment, and the U.S. federal and state income tax structure, of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure insofar as such treatment and/or structure relates to a U.S. federal or state income tax strategy provided to such recipient.

5.11 Indemnification of the Investor.

(a) The Company will indemnify and hold the Investor, its Affiliates and their respective directors, officers, managers, shareholders, members, partners, employees and agents and permitted successors and assigns (each, an "**Investor Party**") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation and defense (collectively, "**Losses**") that any such Investor Party may suffer or incur as a result of or relating to:

(i) any breach or inaccuracy of any representation, warranty, covenant or agreement made by the Company in any Transaction Document;

(ii) any misrepresentation made by the Company in any Transaction Document or in any Public Record document;

(iii) any omission to state any material fact necessary in order to make the statements made in any Public Record, in light of the circumstances under which they were made, not misleading;

(iv) any proceeding before or by any court, public board, government agency, self-regulatory organization or body based upon, or resulting from the execution, delivery, performance or enforcement of any of the Transaction Documents or the consummation of the transactions contemplated thereby, and whether or not the Investor is party thereto by claim, counterclaim, crossclaim, as a defendant or otherwise, or if such Proceeding is based upon, or results from, any of the items set forth in clauses (i) through (iii) above.

(b) In addition to the indemnity contained herein, the Company will reimburse each Investor Party for its reasonable legal and other expenses (including the cost of any investigation, preparation and travel in connection therewith) incurred in connection therewith, as such expenses are incurred.

(c) The provisions of this Section 5.11 shall survive the termination or expiration of this Agreement.

5.12 Non-Public Information. The Company covenants and agrees that neither it nor any other Person acting on its behalf will provide the Investor or its agents or counsel with any information that the Company believes constitutes material, non-public information. To the extent the Company does not comply with this covenant and provides the Investor with material, non-public information, the Company shall publicly disclose such information within seventy two (72) hours of providing the information to the Investor; *provided, however*, in the event that such material non-public information is provided to Investor pursuant to Section 7.2, the Company shall publicly disclose such information within twenty (20) Business Days of providing the information to the Investor. The Company understands and confirms that the Investor shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

5.13 Reserved.

5.14 Reserved.

5.15 Antitrust Notification. If the Investor determines, in its sole judgment and upon the advice of counsel, that the issuance of the Note pursuant to the terms hereof would be subject to the provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), the Company shall file as soon as practicable after the date on which the Company receives notice from the Investor of the applicability of the HSR Act and a request to so file with the United States Federal Trade Commission and the United States Department of Justice the notification and report form required to be filed by it pursuant to the HSR Act in connection with such issuance.

5.16 Reserved.

5.17 Change of Prime Broker, Custodian. Each Investor has informed the Company of the names of its prime broker and its share custodian. Each Investor shall notify the Company of any change in its prime broker or share custodian within three (3) Business Days of such change having taken effect.

5.18 Reserved.

5.19 Reserved.

5.20 Set-Off.

(a) The Investor may set off any of its obligations to the Company (whether or not due for payment), against any of the Company's obligations to the Investor (whether or not due for payment) under this Agreement and/or any other Transaction Document.

(b) The Investor may do anything necessary to effect any set-off undertaken in accordance with this Section 5.20 (including varying the date for payment of any amount payable by the Investor to the Company).

6. CLOSING CONDITIONS.

6.1 Conditions Precedent to the Obligations of the Investor. The obligation of the Investor to fund the Note at the Closing is subject to the satisfaction or waiver by the Investor, at or before such Closing, of each of the following conditions:

(a) Required Documentation. The Company must have delivered to the Investor copies of all resolutions duly adopted by the Company's Executive Committee of its Board of Directors, or any such other documentation of the Company approving the Agreement, the Transaction Documents and any of the transactions contemplated hereby or thereby;

(b) Consents and Permits. The Company must have obtained and delivered to the Investor copies of all necessary permits, approvals, and registrations necessary to effect this Agreement, the Transaction Documents and any of the transactions contemplated hereby or thereby, including pursuant to Section 3.14 of this Agreement;

(c) Reserved;

(d) No Event(s) of Default. No Event of Default shall have occurred and no Event of Default would result from the execution of this Agreement or any of the Transaction Documents or the transactions contemplated hereby or thereby;

(e) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects as of the date when made and as of such Closing as though made on and as of such date;

(f) Performance. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to such Closing;

(g) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents;

(h) No Suspensions of Trading in Common Stock; Listing. Trading in the Common Stock shall not have been suspended by the SEC or Principal Market (except for any suspensions of trading of not more than one day on which the Principal Market is open solely to permit dissemination of material information regarding the Company) at any time since the date of execution of this Agreement, and the Common Stock shall have been at all times since such date listed for trading on a Trading Market;

(i) SEC Reporting. The Company has, during the preceding twelve (12) months, filed with the SEC all reports and other materials required to be filed by Section 13 or 15(d) of the 1934 Act, as applicable;

(j) Reserved;

(k) Perfection of Security Interest; Evidence of Lien Release. The Investor shall have, to the extent possible, perfected certain security interest granted in the assets and collateral of the Company and its Subsidiaries described in the Security Documents. To the extent that the Investor has not perfected the security interest granted in the assets and collateral of the Company and its Subsidiaries as described in the Security Agreement, then, at the expense of the Company, the Company and its Subsidiaries shall immediately take all steps necessary and required to perfect the Investors' security interest in the assets and collateral of the Company and its Subsidiaries;

(l) Post Closing Matters Agreement. The Company must have executed and delivered to the Investor the Post Closing Matters Agreement, substantially in the form set out in Exhibit C; and

(m) Funds Flow Request. The Company shall have delivered to the Investor a flow of funds request, substantially in the form set out in Exhibit D.

6.2 Conditions Precedent to the Obligations of the Company. The obligation of the Company to issue the Note at the Closing is subject to the satisfaction or waiver by the Company, at or before such Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Investor contained herein shall be true and correct in all material respects as of the date when made and as of such Closing Date as though made on and as of such date;

(b) Performance. The Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investor at or prior to the Closing; and

(c) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

7. EVENTS OF DEFAULT.

7.1 Events of Default. The occurrence of any of the following events shall be an "**Event of Default**" under this Agreement:

(a) an Event of Default under the Note;

(b) any of the representations or warranties made by the Company, any Private Subsidiary or any of their agents, officers, directors, employees or representatives in any Transaction Document or public filing being inaccurate, false or misleading in any material respect, as of the date as of which it is made or deemed to be made, or any certificate or financial or other written statements furnished by or on behalf of the Company or any Subsidiary to the Investor or any of its representatives, is inaccurate, false or misleading, in any material respect, as of the date as of which it is made or deemed to be made, or on any Closing Date;

(c) a failure by the Company to comply with any of its covenants or agreements set forth in this Agreement, including but not limited to those set forth in Section 5.7, Section 5.13, Section 6.1(k), and Section 10; or

(d) any default or breach, in any material respect, under the Post Closing Matters Agreement.

7.2 Investor Right to Investigate an Event of Default. If in the Investor's reasonable opinion, an Event of Default has occurred, or is or may be continuing:

(a) the Investor may notify the Company that it wishes to investigate such purported Event of Default;

(b) the Company shall cooperate with the Investor in such investigation;

(c) the Company shall comply with all reasonable requests made by the Investor to the Company in connection with any investigation by the Investor and shall (i) provide all information requested by the Investor in relation to the Event of Default to the Investor; provided that the Investor agrees that any materially price sensitive information and/or non-public information will be subject to confidentiality, and (ii) provide all such requested information within five (5) Business Days of such request; and

(d) the Company shall pay all reasonable costs incurred by the Investor in connection with any such investigation.

7.3 Remedies Upon an Event of Default.

(a) If an Event of Default occurs pursuant to Section 7.1(a), the Investor shall have such remedies as are set forth in the Note.

(b) If an Event of Default occurs pursuant to Section 7.1(b) or Section 7.1(c) and is not remedied within ten (10) Business Days, the Investor may declare, by notice to the Company or the applicable Subsidiary, as applicable, effective immediately, all outstanding obligations by the Company or the applicable Subsidiary, as applicable, under the Transaction Documents to be immediately due and payable in immediately available funds and the Investor shall have no obligation to consummate any Closing under this Agreement.

(c) If any Event of Default occurs and is not remedied within ten (10) Business Days, the Investor may, by written notice to the Company, terminate this Agreement effective as of the date set forth in the Investor's notice.

8. TERMINATION.

8.1 Events of Termination. This Agreement:

(a) may be terminated:

(i) by the majority in interest of the Investors on the occurrence or existence of a Securities Termination Event or a Change of Control pursuant to subsection (c) or (d) contained in that definition;

(ii) by the mutual written consent of the Company and the majority in interest of the Investors, at any time;

(iii) by either party, by written notice to the other Parties, effective immediately, if the Closing has not occurred within fifteen (15) Business Days of the date of this Agreement or such later date as the Company and the majority in interest of the Investors agree in writing, provided that the right to terminate this Agreement under this Section 8.1(a)(iii) is not available to any party that is in material breach of or material default under this Agreement or whose failure to fulfill any obligation under this Agreement has been the principal cause of, or has resulted in the failure of the Closing to occur; or

(iv) by the majority in interest of the Investors, in accordance with Section 7.3(c).

8.2 Automatic Termination. This Agreement will automatically terminate, without further action by the parties, at the time after the Closing that the Principal Amount outstanding under the Note and any accrued but unpaid interest is reduced to zero (0), whether as a result of prepayment or repayment by the Company in accordance with the terms of this Agreement and the Note.

8.3 Effect of Termination.

(a) Subject to Section 8.3(b), each party's right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies.

(b) If the Investor terminates this Agreement under Section 8.1(a)(i):

(i) the Investor may declare, by notice to the Company, all outstanding obligations by the Company under the Transaction Documents to be due and payable (including, without limitation, the immediate repayment of any Principal Amount outstanding under the Note plus accrued but unpaid interest) without presentment, demand, protest or any other notice of any kind, all of which are expressly waived by the Company, anything to the contrary contained in this Agreement or in any other Transaction Document notwithstanding; and

(ii) the Company must within five (5) Business Days of such notice being received, pay to the Investor in immediately available funds the outstanding Principal Amount for the Note plus all accrued interest thereon (if any), unless the Investor terminates this Agreement as a result of an Event of Default.

(c) Nothing in this Agreement will be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement.

9. RESERVED.

10. GENERAL PROVISIONS.

10.1 Fees and Expenses. The Company has paid by wire transfer to the Investor's legal counsel, McDermott Will & Emery LLP ("**Investor Counsel**"), cash in the amount of Seventy-Five Thousand Dollars ($75,000) for legal services. At the Closing, the Company shall pay any reasonable expenses and disbursements incurred by Investor Counsel in connection with the preparation of the Transaction Documents, it being understood that Investor Counsel has not rendered any legal advice to the Company in connection with the transactions contemplated hereby and that the Company has relied for such matters on the advice of its own counsel. Following the Closing, the Company shall reimburse the Investor for all reasonable fees and disbursements of Investor Counsel in connection with any additional agreements arising pursuant to the transactions contemplated in this Agreement, including, but not limited to, intercreditor agreements relating to the Note and any agreements or documentation required with respect to the Investor's exercise of any of its rights hereunder. Except as specified above, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of the Transaction Documents. The Company shall pay all stamp and other Taxes and duties levied in connection with the sale of the Note.

10.2 Appointment of Collateral Agent. The Investor agrees to the appointment of Esousa Group Holdings, LLC, an Investor in the Notes, to act as Collateral Agent and further each Investor authorizes Esousa Group Holdings, LLC to act as Collateral Agent in accordance with the terms and conditions detailed in the Security Agreement, executed and delivered on the date hereof, by and between the Company and Esousa Group Holdings, LLC. The Collateral Agent shall receive a fee of $25,000, as more fully detailed in that certain Fee Letter executed and delivered in connection with this Agreement and the Security Agreement.

10.3 Consultation with Counsel. Each Investor has had the opportunity to seek independent counsel and to consult with counsel in order to review the Transaction Documents and to advise the Company with respect thereto before executing this Agreement. Each Investor is executing this Agreement without duress or coercion and without reliance on any representations, warranties or commitments other than those representations, warranties, and commitments set forth in this Agreement.

10.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section 10.4 prior to 5:00 p.m. (New York time) on a Business Day, (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email at the email address specified in this Section on a day that is not a Business Day or later than 5:00 p.m. (New York time) on any date and earlier than 11:59 p.m. (New York time) on such date, (c) the Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by email or facsimile, or sent by a nationally recognized overnight courier service addressed to each Investor at the email address, facsimile number, or address of the Investor appearing on the books of the Company, or if no such email address, facsimile number, or address appears on the books of the Company, at the principal place of business of such Investor set forth on the Investor's signature page attached hereto. The address for such notices and communications shall be as follows:

If to the Company:

William B. Horne
Chief Executive Officer
BitNile Holdings, Inc.
11411 Southern Highlands Parkway, Suite 240
Las Vegas, Nevada 89141
Direct:
Email:

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

Henry Nisser
President and General Counsel
BitNile Holdings, Inc.
100 Park Avenue, 16th Floor
Suite 1658A
New York, NY 10017
Direct:
Email:

10.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be excessive in scope or otherwise invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, so that it is enforceable to the maximum extent possible, and the validity and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without reference to principles of conflict of laws or choice of laws.

10.7 Jurisdiction and Venue. Any action, proceeding or claim arising out of, or relating in any way to this Agreement shall be brought and enforced in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York. The Company and the Investor irrevocably submit to the jurisdiction of such courts, which jurisdiction shall be exclusive, and hereby waive any objection to such exclusive jurisdiction or that such courts represent an inconvenient forum. The prevailing party in any such action shall be entitled to recover its reasonable and documented attorneys' fees and out-of-pocket expenses relating to such action or proceeding.

10.8 WAIVER OF RIGHT TO JURY TRIAL. THE COMPANY AND THE INVESTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS.

10.9 Survival. The representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Note.

10.10 Entire Agreement. The Transaction Documents, together with the Exhibits and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

10.11 Amendments; Waivers. No provision of this Agreement may be waived or amended except in a written instrument signed by the Company and the Investor. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

10.12 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This 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 provisions of this Agreement or any of the Transaction Documents.

10.13 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Company and the Investor and their respective successors and assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investor. The Investor may assign any or all of its rights under this Agreement to any Person to whom the Investor assigns or transfers any the Note, provided such transferee agrees in writing to be bound, with respect to the transferred Note, by the provisions hereof that apply to the "Investor" and such transferee is an accredited investor.

10.14 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

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

10.16 Counterparts. This Agreement may be executed in two identical counterparts, both of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. Signature pages delivered by facsimile or e-mail shall have the same force and effect as an original signature.

10.17 Specific Performance. The Company acknowledges that monetary damages alone would not be adequate compensation to the Investor for a breach by the Company of this Agreement and the Investor may seek an injunction or an order for specific performance from a court of competent jurisdiction if (a) the Company fails to comply or threatens not to comply with this Agreement or (b) the Investor has reason to believe that the Company will not comply with this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Securities Purchase Agreement as of the date first set forth above.

COMPANY:

BITNILE HOLDINGS, INC.

By: _____
Name: William B. Horne
Title: Chief Executive Officer

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[SIGNATURE PAGE FOR THE INVESTORS FOLLOWS]

INVESTOR SIGNATURE PAGES TO BITNILE HOLDINGS, INC. SECURITIES PURCHASE AGREEMENT

IN WITNESS WHEREOF, the undersigned has caused this Securities Purchase Agreement to be duly executed by its authorized signatory as of the date first indicated above.

Name of Investor:

Signature of Authorized Signatory of Investor: _____

Name of Authorized Signatory:
Title of Authorized Signatory:
Email Address of Authorized Signatory:
Facsimile Number of Authorized Signatory: _____

Address for Notice to Investor:

Subscription Amount:

EIN Number:_____

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

Exhibit 10.2

SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT**, dated as of December 16, 2022 (this "**Agreement**"), is made by **BITNILE HOLDINGS, INC**., a Delaware corporation (the "**Company**", and collectively with each Person listed as a "Grantor" on the signature pages hereto (together with each other Person that executes a joinder agreement and becomes a "Grantor" hereunder or otherwise guaranties all or any part of the Secured Obligations, each a "**Grantor**" and, collectively with the Company, the "**Grantors**") and **ESOUSA GROUP HOLDINGS, LLC**, a New York limited liability company ("**Esousa**"), in its capacity as collateral agent for the Secured Parties referred to below (in such capacity, together with its successors and assigns in such capacity, if any, the "**Collateral Agent**").

RECITALS:

A. Pursuant to the Securities Purchase Agreement, dated as of the date hereof (such agreement, as amended, restated, supplemented, modified or otherwise changed from time to time, including any replacement agreement therefor, being herein referred to as the "**Purchase Agreement**"), by and among the Company, the investors from time to time party thereto (each a **"Investor**" and collectively, the "**Investors**"), and the Collateral Agent, the Investors have agreed to purchase certain Senior Secured Promissory Notes dated on or about the date hereof (each a "**Note**" and collectively, the "**Notes**") from the Company.

B. It is a condition precedent to the Investors purchasing the Notes from the Company pursuant to the Purchase Agreement that each Grantor grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and lien on all of the Collateral.

C. The Grantors are mutually dependent on each other in the conduct of their respective businesses as an integrated operation, with credit needed from time to time by each Grantor often being provided through financing obtained by the other Grantors and the ability to obtain such financing being dependent on the successful operations of all of the Grantors as a whole.

D. Each Grantor has determined that the execution, delivery and performance of this Agreement directly benefit, and are in the best interest of, such Grantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Collateral Agent and the Investors to purchase the Notes and to provide other financial accommodations to the Company pursuant to the Purchase Agreement, the Grantors hereby jointly and severally agree with the Collateral Agent, for the benefit of the Secured Parties, as follows:

SECTION 1. Definitions.

(a) Reference is hereby made to the Purchase Agreement for a statement of the terms thereof. All capitalized terms used in this Agreement and the recitals hereto which are defined in the Purchase Agreement or in Article 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "**Code**") and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute.

(b) The following terms shall have the respective meanings provided for in the Code: "Accounts", "Account Debtor", "Cash Proceeds", "Certificate of Title", "Chattel Paper", "Commercial Tort Claim", "Commodity Account", "Commodity Contracts", "Deposit Account", "Documents", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit Rights", "Noncash Proceeds", "Payment Intangibles", "Proceeds", "Promissory Notes", "Record", "Security Account", "Software", "Supporting Obligations" and "Tangible Chattel Paper".

(c) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Additional Collateral**" has the meaning specified therefor in Section 4(a)(i).

"**Copyrights**" means any and all rights in any published and unpublished works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule II and all renewals, extensions, restorations and reversions thereof, (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Grantor's rights corresponding thereto throughout the world.

"**Event of Default**" has the meaning given to such term in the Purchase Agreement and the Notes.

"**Existing Issuer**" has the meaning specified therefor in the definition of the term "Pledged Shares".

"**Intellectual Property**" means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

"**Licenses**" means, with respect to any Person (the "**Specified Party**"), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the- shelf software that is generally available to the public which have been licensed to a Grantor pursuant to end-user licenses), (B) the license agreements listed on Schedule III, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of any of the Collateral Agent's and the Investors' rights under the Transaction Documents.

"**Lien**" means any lien, encumbrance, claim, charge, pledge, security interest, assignment, hypothecation, deed of trust, mortgage, lease, conditional sale, retention of title or other preferential arrangement having substantially the same economic effect as any of the foregoing, whether voluntary, involuntary or imposed by Law.

"**Patents**" means patents and patent applications, including (i) the patents and patent applications listed on Schedule IV, (ii) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Grantor's rights corresponding thereto throughout the world.

"**Permitted Liens**" mean (1) Liens and security interests securing Indebtedness owed by a Grantor to any other Grantor, provided that such Indebtedness is subordinate to the Secured Obligations and such Liens are second in priority to the Liens of the Agent; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business on an arms' length basis and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by a Grantor in the ordinary course of business to secure Indebtedness outstanding on the date of this Agreement or permitted to be incurred under this Agreement; (5) Liens which, as of the date of this Agreement, have been disclosed to and approved by the Agent on behalf of the Investors in writing; and (6) those Liens which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of the Grantors' assets, taken as a whole, in any event not exceeding $25,000in any single instance or $100,000 in the aggregate outstanding at any time.

"**Pledged Debt**" means the indebtedness described in Schedule X and all indebtedness from time to time owned or acquired by a Grantor, the promissory notes and other Instruments evidencing any or all of such indebtedness, and all interest, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness.

"**Pledged Interests**" means, collectively, (a) the Pledged Debt, (b) the Pledged Shares and (c) all security entitlements in any and all of the foregoing.

"**Pledged Issuer**" has the meaning specified therefor in the definition of the term "Pledged Shares".

"**Pledged Shares**" means (a) the shares of Equity Interests described in Schedule XI, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, issued by the Persons described in such Schedule XI (the "**Existing Issuers**"), (b) the shares of Equity Interests at any time and from time to time acquired by a Grantor of any and all Persons now or hereafter existing (such Persons, together with the Existing Issuers, being hereinafter referred to collectively as the "**Pledged Issuers**" and each individually as a "**Pledged Issuer**"), whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, and (c) the certificates representing such shares of Equity Interests, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, Instruments, Investment Property, financial assets, securities, Equity Interests, other equity interests, stock options and commodity contracts, notes, debentures, bonds, promissory notes or other evidences of indebtedness and all other property (including without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

"**Post-Closing Agreement**" means the Post-Closing Agreement of even date herewith between the Agent and the Company.

"**Secured Obligations**" has the meaning specified therefor in Section 3.

"**Secured Parties**" means the Agent, for itself and on behalf of the Investors, and the Investors, and each of their successors and assigns.

"**Titled Collateral**" means all Collateral for which the title to such Collateral is governed by a Certificate of Title or certificate of ownership, including without limitation, all motor vehicles (including without limitation, all trucks, trailers, tractors, service vehicles, automobiles and other mobile equipment) for which the title to such motor vehicles is governed by a Certificate of Title or certificate of ownership.

"**Trademarks**" means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks, brand names, certification marks, collective marks, logos, symbols, trade dress, assumed names, fictitious names and service mark applications, including (i) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule V, (ii) all extensions, modifications and renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iv) the right to sue for past, present and future infringements and dilutions thereof, (v) the goodwill of each Grantor's business symbolized by the foregoing or connected therewith, and (vi) all of each Grantor's rights corresponding thereto throughout the world.

"**Transaction Documents**" has the meaning given to such term in the Purchase Agreement and the Notes, and includes this Agreement and any Security Agreement Supplement, as any of such documents may be amended, restated, supplemented, modified or otherwise changed from time to time.

SECTION 2. Grant of Security Interest. As collateral security for the payment, performance and observance of all of the Secured Obligations, each Grantor hereby pledges and assigns to the Collateral Agent (and its agents and designees), and grants to the Collateral Agent (and its agents and designees), for itself and the benefit of the other Secured Parties, a continuing security interest in the following personal property of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, (all being collectively referred to herein as the "**Collateral**"):

(a) Twelve thousand (12,000) Antminers, including: (a) all additions, replacements of and substitutions for all or any part of the foregoing property; (b) all records and data and embedded software relating to the foregoing property; and (c) all Proceeds including all Cash Proceeds and Noncash Proceeds (including any insurance proceeds), and products of any and all of the foregoing Collateral thereof (collectively, the "**Mining Collateral**"). The Mining Collateral shall not include any Bitcoin mined from the Mining Collateral. The serial numbers of the miners that constitute the Mining Collateral are and, in the future, shall be set forth on Schedule XII hereto, which may be amended from time to time by the Grantors to add additional miners upon prior written notice to the Collateral Agent, and may be amended from time to time to remove miners upon ten (10) days prior written notice to, and the consent of, the Collateral Agent. The parties agree that on the date hereof Schedule XII lists eleven thousand eight hundred pieces of Mining Collateral and that not later than five days after the date hereof, Schedule XII will be updated by the Grantors to include an additional 200 pieces of Mining Collateral;

(b) In addition to the assets set forth in clause (a) above, a security interest in the following assets of the Grantors (other than Bitnile, Inc.) except for (A) marketable securities, investments and other property having a value of not more than $10 million held in E*Trade Securities LLC Account No. 5061-2587, (B) the securities of Mullen Automotive Inc., a Delaware corporation ("**Mullen**"), purchased by Ault Lending, LLC in the Second Closing (as defined in the Mullen Agreement referred to below) for $8,181,819.00 (the "**Purchased Securities**") pursuant to the Amendment No. 3 to Securities Purchase Agreement, effective November 15, 2022, by and among Mullen, Ault Lending, LLC and the other purchaser signatories thereto (the "**Mullen Agreement**"), (C) any other securities of Mullen that the Purchased Securities are convertible into or exchangeable or excisable for (collectively with the Purchased Securities, the "**Mullen Securities**"), and (D) all Proceeds from the Mullen Securities (collectively, (A) – (D) are referred to as the "**Excluded Assets**"), which Excluded Assets are subject to an existing security agreement:

(i) all Accounts;

(ii) all Chattel Paper (whether tangible or electronic);

(iii) all Commercial Tort Claims, including without limitation, those specified on Schedule IX;

(iv) all Deposit Accounts, all cash, and all other property from time to time deposited therein or otherwise credited thereto and the monies and property in the possession or under the control of the Collateral Agent or any Investor or any Affiliate, representative, agent or correspondent of the Collateral Agent or any Investor;

(v) all Documents;

(vi) all General Intangibles (including without limitation, all Payment Intangibles, Intellectual Property and Licenses);

(vii) all Goods, including without limitation, all Equipment, Fixtures and Inventory;

(viii) all Instruments (including without limitation, Promissory Notes);

(ix) all Investment Property;

(x) all Letter-of-Credit Rights;

(xi) all Pledged Interests;

(xii) all Supporting Obligations;

(xiii) all other tangible and intangible personal property of the Grantors (other than Bitnile, Inc.) (whether or not subject to the Code), including without limitation, all bank and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 2 (including without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by such Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including without limitation, all tapes, disks, cards, Software, data and computer programs in the possession or under the control of such Grantor or any other Person from time to time acting for such Grantor that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2 or are otherwise necessary or helpful in the collection or realization thereof; and

(xiv) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever such Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

SECTION 3. Security for Secured Obligations. The security interest created under this Agreement, including under Section 2, in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred (the "**Secured Obligations**"):

(a) the prompt payment by each Grantor, as and when due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Purchase Agreement, the Notes and any other Transaction Documents, including without limitation, (i) all obligations of the Company to pay the "Principal Amount" under the Notes and make and fulfill any other repayment obligations as to the principal thereunder, (ii) in the case of a Grantor, all amounts from time to time owing by such Grantor in respect of its guaranty made pursuant to this Agreement or under any other guaranty to which it is a party, including without limitation, all obligations guaranteed by such Grantor and (iii) all interest, fees, commissions, charges, expense reimbursements, indemnifications and all other amounts due or to become due under any Note or other Transaction Document (including without limitation, all interest, fees, commissions, charges, expense reimbursements, indemnifications and other amounts that accrue after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest, fees, commissions, charges, expense reimbursements, indemnifications and other amounts are unenforceable or are not allowable, in whole or in part, due to the existence of such Insolvency Proceeding); and

(b) the due performance and observance by each Grantor of all of its other obligations from time to time existing in respect of the Purchase Agreement, the Notes and any other Transaction Documents;

provided that, when the Notes have been indefeasibly paid in full pursuant to their terms, the term "Secured Obligations" shall not include any of the foregoing obligations under the Purchase Agreement or any other Transaction Documents, and any remaining obligations under such Transaction Documents shall no longer be secured hereby.

SECTION 4. Delivery of the Pledged Interests.

(a) (i) All promissory notes currently evidencing the Pledged Debt and all certificates currently representing the Pledged Shares shall be delivered to the Collateral Agent, subject to the Post-Closing Agreement, on or prior to the execution and delivery of this Agreement. All other promissory notes, certificates and Instruments constituting Pledged Interests from time to time required to be pledged to the Collateral Agent pursuant to the terms of this Agreement or the Purchase Agreement (the "**Additional Collateral**") shall be delivered to the Collateral Agent promptly upon, but in any event within five days of, receipt thereof by or on behalf of any of the Grantors. All such promissory notes, certificates and Instruments shall be held by or on behalf of the Collateral Agent pursuant hereto and shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment or undated stock powers executed in blank, all in form and substance reasonably satisfactory to the Collateral Agent. If any Pledged Interest consists of uncertificated securities, unless the immediately following sentence is applicable thereto, such Grantor shall cause the Collateral Agent (or its designated custodian or nominee) to become the registered holder thereof, or cause each issuer of such securities to agree, so long as this Agreement is effective, that it will comply with instructions originated by the Collateral Agent with respect to such securities without further consent by such Grantor. If any Pledged Interest consists of security entitlements, such Grantor shall transfer such security entitlements to the Collateral Agent (or its custodian, nominee or other designee), or cause the applicable securities intermediary to agree that it will comply with entitlement orders by the Collateral Agent without further consent by such Grantor.

(ii) Within five days of the receipt by a Grantor of any Additional Collateral, a Pledge Amendment, duly executed by such Grantor, in substantially the form of Exhibit A hereto (a "**Pledge Amendment**"), shall be delivered to the Collateral Agent, in respect of the Additional Collateral that must be pledged pursuant to this Agreement and the Purchase Agreement. The Pledge Amendment shall from and after delivery thereof constitute part of Schedules X. Each Grantor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all promissory notes, certificates or Instruments listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder constitute Pledged Interests and such Grantor shall be deemed upon delivery thereof to have made the representations and warranties set forth in Section 5 with respect to such Additional Collateral.

(b) If any Grantor shall receive, by virtue of such Grantor's being or having been an owner of any Pledged Interests, any (i) stock certificate (including without limitation, any certificate representing a stock dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares, stock split, spin-off or split-off), promissory note or other Instrument, (ii) option or right, whether as an addition to, substitution for, or in exchange for, any Pledged Interests, or otherwise, (iii) dividends payable in cash (except such dividends permitted to be retained by any such Grantor pursuant to Section 7) or in securities or other property or (iv) dividends, distributions, cash, Instruments, Investment Property and other property in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in surplus, such Grantor shall receive such stock certificate, promissory note, Instrument, option, right, payment or distribution in trust for the benefit of the Collateral Agent, shall segregate it from such Grantor's other property and shall deliver it forthwith to the Collateral Agent, in the exact form received, with any necessary indorsement and appropriate stock powers duly executed in blank, to be held by the Collateral Agent as Pledged Interests and as further collateral security for the Secured Obligations.

SECTION 5. Representations and Warranties. Each Grantor represents and warrants as of the date of this Agreement or any applicable Security Agreement Supplement to which it is a party as follows:

(a) Schedule I sets forth (i) the exact legal name of each Grantor, (ii) the state or jurisdiction of organization of each Grantor, (iii) the type of organization of each Grantor and (iv) the organizational identification number of each Grantor or states that no such organizational identification number exists.

(b) Except as disclosed in the Public Record, there is no pending or, to the knowledge of any Grantor, written notice threatening action, suit, proceeding or claim before any court or other Governmental Entity or any arbitrator, or any order, judgment or award by any court or other Governmental Entity or any arbitrator, that may adversely affect the grant by any Grantor, or the perfection, of the security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(c) All Equipment, Fixtures, Inventory and other Goods included within the definition of Collateral now existing are, and all Equipment, Fixtures, Inventory and other Goods included within the definition of Collateral hereafter existing will be, located at the addresses specified therefor in Schedule VI (as amended, supplemented or otherwise modified from time to time in accordance with Section 6(b)). Each Grantor's chief place of business and chief executive office, the place where such Grantor keeps its Records concerning Accounts included within the definition of Collateral and all originals of all Chattel Paper included within the definition of Collateral are located at the addresses specified therefor in Schedule VI (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof). None of the Accounts included within the definition of Collateral is evidenced by Promissory Notes or other Instruments. Set forth in Schedule VII is a complete and accurate list, as of the date of this Agreement, of each Deposit Account included within the definition of Collateral, together with the name and address of each institution at which each such Account is maintained, the account number for each such Account and a description of the purpose of each such Account. Set forth in Schedule V is (i) a complete and correct list of each trade name used by each Grantor and (ii) the name of, and each trade name used by, each Person from which such Grantor has acquired any substantial part of the Collateral within five years of the date hereof.

(d) As of the Effective Date, (i) Schedule II provides a complete and correct list of all registered Copyrights included within the definition of Collateral owned by any Grantor, all applications for registration of Copyrights included within the definition of Collateral owned by any Grantor, and all other Copyrights owned by any Grantor and material to the conduct of the business of any Grantor; (ii) Schedule III provides a complete and correct list of all Licenses included within the definition of Collateral entered into by any Grantor pursuant to which (A) any Grantor has provided any license or other rights in Intellectual Property owned or controlled by such Grantor to any other Person other than non-exclusive software licenses granted in the ordinary course of business or (B) any Person has granted to any Grantor any license or other rights in Intellectual Property owned or controlled by such Person that is material to the business of such Grantor; (iii) Schedule IV provides a complete and correct list of all Patents included within the definition of Collateral owned by any Grantor and all applications for Patents included within the definition of Collateral owned by any Grantor; and (iv) Schedule V provides a complete and correct list of all registered Trademarks included within the definition of Collateral owned by any Grantor, all applications for registration of Trademarks included within the definition of Collateral owned by any Grantor, and all other Trademarks included within the definition of Collateral owned by any Grantor and material to the conduct of the business of any Grantor.

(e) (i) (A) each Grantor owns, or holds licenses in, or otherwise possesses legally enforceable rights in, all Intellectual Property that is reasonably necessary to the operation of its business as currently conducted, and (B) each Grantor is the sole and exclusive owner of Intellectual Property (free and clear of any Liens other than Permitted Liens) used by it and has sole and exclusive rights to the use and distribution therefor or the material covered thereby in connection with the services or products in respect of which such Intellectual Property are currently being used, sold, licensed or distributed.

(ii) Except for those claims which could not reasonably be expected to result in a Material Adverse Effect and which the applicable Grantor is diligently pursuing the remedy thereof, no claims with respect to the Intellectual Property rights of any Grantor constituting Collateral are pending or, to the knowledge of such Grantor, threatened against such Grantor or, to the knowledge of any Grantor, any other Person, (i) alleging that the manufacture, sale, licensing or use of such Intellectual Property as now manufactured, sold, licensed or used by any Grantor or any third party infringes on any intellectual property rights of any third party, (ii) against the use by such Grantor or any third party of any technology, know-how or computer software used in such Grantor's business as currently conducted or (iii) challenging the ownership by such Grantor, or the validity or effectiveness, of any such Intellectual Property.

(f) To the knowledge of any Grantor, (i) no Grantor has infringed on any intellectual property rights of any third party and (ii) none of the Intellectual Property rights of any Grantor constituting Collateral infringes on any intellectual property rights of any third party.

(g) All registered Copyrights, registered Trademarks, and issued Patents that are owned by any Grantor and necessary in the conduct of its business are valid, subsisting and enforceable and have at all times been in compliance with all laws, rules, regulations, and orders of any Governmental Entity applicable thereto.

(h) Each Grantor has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all trade secrets owned by such Grantor that are necessary in the business of such Grantor.

(i) Other than software which by the terms of its own license explicitly permits the licensee to distribute the software together with other commercial programs with no restrictions on such Grantor's ability to charge fees for such distribution and with no restriction on such Grantor's right to receive payments for transfer of its Intellectual Property, no open source or public library software, including any version of any software licensed pursuant to any GNU public license, is, in whole or in part, embodied or incorporated, in any manner, in any Grantor's software products that is licensed or distributed by such Grantor. No open source or public library software licensed pursuant to any GNU public license which requires any Grantor to license such Grantor's software products to third parties, or any other license which requires such Grantor to license such Grantor's software products to third parties, is embodied or incorporated, in any manner, in such Grantor's source code.

(j) The Pledged Shares have been duly authorized and validly issued and are fully paid and nonassessable and the holders thereof are not entitled to any preemptive, first refusal or other similar rights.

(k) The promissory notes currently evidencing the Pledged Debt have been, and all other promissory notes from time to time evidencing Pledged Debt, when executed and delivered, will have been, duly authorized, executed and delivered by the respective makers thereof, and all such promissory notes are or will be, as the case may be, legal, valid and binding obligations of such makers, enforceable against such makers in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws.

(l) The Grantors are and will be at all times the sole and exclusive owners of, or otherwise have and will have adequate rights in, the Collateral free and clear of any Lien, except for Permitted Liens. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office, except such as are securing Permitted Liens as of the date hereof.

(m) The exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any Law or any contractual restriction binding on or otherwise affecting any Grantor or any of its properties and will not result in, or require the creation of, any Lien upon or with respect to any of its properties.

(n) No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or any other Person (other than those that have been obtained and are in full force and effect) is required for (i) the due execution, delivery and performance by any Grantor of this Agreement, (ii) the grant by any Grantor of the security interest purported to be created hereby in the Collateral or (iii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, except, in the case of this clause (iii), as may be required in connection with any sale of any Pledged Interests by Laws affecting the offering and sale of securities generally, except for (A) the filing under the Uniform Commercial Code as in effect in the applicable jurisdiction of the financing statements described in Schedule VIII and (B) such control account agreements required to perfect the Liens hereunder, as may be subject to Section 6(l) and the Post-Closing Agreement. No authorization or approval or other action by, and no notice to or filing with, any Governmental Entity or any other Person, is required for the perfection of the security interest purported to be created hereby in the Collateral (other than those that have been obtained and are in full force and effect), except (A) for the filing under the Uniform Commercial Code as in effect in the applicable jurisdiction of the financing statements described in Schedule VIII, (B) such control account agreements required to perfect the Liens hereunder, as may be subject to Section 6(l) and the Post-Closing Agreement, (C) with respect to the perfection of the security interest created hereby in the United States Intellectual Property and Licenses, for the recording of the appropriate Assignment for Security, substantially in the form of Exhibit B hereto in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, (D) with respect to the perfection of the security interest created hereby in Titled Collateral, for the submission of an appropriate application requesting that the Lien of the Collateral Agent be noted on the Certificate of Title or certificate of ownership, completed and authenticated by the applicable Grantor, together with the Certificate of Title or certificate of ownership, with respect to such Titled Collateral, to the appropriate Governmental Entity, (E) with respect to any action that may be necessary to obtain control of Collateral constituting Deposit Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, the taking of such actions, and (F) the Collateral Agent's having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral (subclauses (A), (B), (C), (D), (E), and (F), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**").

(o) This Agreement creates a legal, valid and enforceable security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in the Collateral, as security for the Secured Obligations. The compliance with the Perfection Requirements result in the perfection of such security interests. Such security interests are, or in the case of Collateral in which any Grantor obtains rights after the date hereof, will be, perfected, first priority security interests subject only to Permitted Liens and the Perfection Requirements. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for (i) the Collateral Agent's having possession of all Instruments, Documents, Chattel Paper and cash constituting Collateral after the date hereof, (ii) the Collateral Agent's having control of all Deposit Accounts (subject to Section 6(l)), Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights constituting Collateral after the date hereof, and (iii) the other filings and recordations and actions described in Section 5(n).

(p) As of the date hereof, no Grantor holds any Commercial Tort Claims or is aware of any such pending claims, except for such claims described in Schedule IX.

(q) With respect to each Grantor and its Subsidiaries that is a partnership or a limited liability company, each such Person has irrevocably opted into (and has caused each of its Subsidiaries that is a partnership or a limited liability company, and a Pledged Issuer to opt into) Article 8 of the Uniform Commercial Code. Such interests are securities for purposes of Article 8 of any relevant Uniform Commercial Code.

SECTION 6. Covenants as to the Collateral. So long as any of the Secured Obligations (whether or not due) shall remain unpaid, unless the Collateral Agent shall otherwise consent in writing:

(a) Further Assurances. Each Grantor will at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable or that the Collateral Agent may request in order (i) to perfect and protect, or maintain the perfection of, the security interest and Lien purported to be created hereby; (ii) to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) otherwise to effect the purposes of this Agreement, including without limitation: (A) marking conspicuously all Chattel Paper, Instruments and Licenses and, at the request of the Collateral Agent, all of its Records pertaining to the Collateral with a legend, in form and substance satisfactory to the Collateral Agent, indicating that such Chattel Paper, Instrument, License or Collateral is subject to the security interest created hereby, (B) if any Account shall be evidenced by a Promissory Note or other Instrument or Chattel Paper, delivering and pledging to the Collateral Agent such Promissory Note, other Instrument or Chattel Paper, duly endorsed and accompanied by executed instruments of transfer or assignment, all in form and substance satisfactory to the Collateral Agent, (C) executing and filing (to the extent, if any, that such Grantor's signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, (D) with respect to Intellectual Property hereafter existing and not covered by an appropriate security interest grant, the executing and recording in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, appropriate instruments granting a security interest, as may be necessary or desirable or that the Collateral Agent may reasonably request in order to perfect and preserve the security interest purported to be created hereby, (E) delivering to the Collateral Agent irrevocable proxies in respect of the Pledged Interests, (F) furnishing to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail, (G) if at any time after the date hereof, any Grantor (other than Bitnile, LLC) acquires or holds any Commercial Tort Claim with a maximum potential value in excess of $100,000, promptly notifying the Collateral Agent in a writing signed by such Grantor setting forth a brief description of such Commercial Tort Claim and granting to the Collateral Agent a security interest therein and in the proceeds thereof, which writing shall incorporate the provisions hereof and shall be in form and substance satisfactory to the Collateral Agent, (H) upon the acquisition after the date hereof by any Grantor of any Titled Collateral, promptly notifying the Collateral Agent of such acquisition, setting forth a description of the Titled Collateral acquired and a good faith estimate of the current value of such Titled Collateral, and if so requested by the Collateral Agent, promptly causing the Collateral Agent to be listed as the lienholder on such Certificate of Title or certificate of ownership and delivering evidence of the same to the Collateral Agent, and (I) taking all actions required by Law in any relevant Uniform Commercial Code jurisdiction, or by other Law as applicable in any foreign jurisdiction. Except in accordance with this Agreement, no Grantor shall take or fail to take any action which would in any manner impair the validity or enforceability of the Collateral Agent's security interest in and Lien on any Collateral.

(b) Location of Equipment and Inventory. Each Grantor will keep the Equipment and Inventory (other than Equipment and Inventory sold in the ordinary course of business in accordance with Section 6(h)) at the locations specified in Schedule VI or, upon not less than 30 days' prior written notice to the Collateral Agent accompanied by a new Schedule VI indicating each new location of the Equipment and Inventory, at such other locations in the continental United States as the Grantors may elect, provided that (i) all action has been taken to grant to the Collateral Agent a perfected, first priority security interest in such Equipment and Inventory, and (ii) the Collateral Agent's rights in such Equipment and Inventory, including without limitation, the existence, perfection and priority of the security interest created hereby in such Equipment and Inventory, are not adversely affected thereby.

(c) Condition of Equipment. Each Grantor will maintain or cause the Equipment which is necessary or useful in the proper conduct of its business to be maintained and preserved in good condition, repair and working order and in accordance with any manufacturer's manual, ordinary wear and tear excepted, and will forthwith, or in the case of any loss or damage to any Equipment promptly after the occurrence thereof, make or cause to be made all repairs, replacements and other improvements in connection therewith which are necessary or desirable, consistent with past practice, or which the Collateral Agent may reasonably request to such end. Each Grantor will promptly furnish to the Collateral Agent a statement describing in reasonable detail any loss or damage in excess of $50,000 to any Equipment.

(d) Taxes, Etc. Each Grantor jointly and severally agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the validity thereof is being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves in accordance with GAAP have been set aside for the payment thereof, or otherwise provided in the Purchase Agreement.

(e) Insurance. Each Grantor will, at its own expense, maintain insurance with respect to the Collateral in accordance with the terms of the Purchase Agreement. Each Grantor will, if so requested by the Collateral Agent, deliver to the Collateral Agent original or duplicate insurance policies and, as often as the Collateral Agent may reasonably request, a report of a reputable insurance broker with respect to such insurance. Each Grantor will also, at the request of the Collateral Agent, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(f) Provisions Concerning the Accounts and the Licenses.

(i) Each Grantor will, except as otherwise provided in this subsection (f), continue to collect, at its own expense, all amounts due or to become due under the Accounts. In connection with such collections, each Grantor may (and, at the Collateral Agent's direction, will) take such action as such Grantor (or, if applicable, the Collateral Agent) may deem necessary or advisable to enforce collection or performance of the Accounts; provided, however, that the Collateral Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default, to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Collateral Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent or its designated agent and, upon such notification and at the expense of such Grantor and to the extent permitted by Law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. After receipt by any Grantor of a notice from the Collateral Agent that the Collateral Agent has notified, intends to notify, or has enforced or intends to enforce a Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the proviso to the immediately preceding sentence, (A) all amounts and proceeds (including Instruments) received by such Grantor in respect of the Accounts shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent or its designated agent in the same form as so received (with any necessary endorsement) to be held as cash collateral and applied as specified in Section 9(d), and (B) such Grantor will not adjust, settle or compromise the amount or payment of any Account or release wholly or partly any Account Debtor or obligor thereof or allow any credit or discount thereon. In addition, upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may (in its sole and absolute discretion) direct any or all of the banks and financial institutions with which any Grantor either maintains a Deposit Account or a lockbox or deposits the proceeds of any Accounts to send promptly to the Collateral Agent or its designated agent by wire transfer (to such account as the Collateral Agent shall specify, or in such other manner as the Collateral Agent shall direct) all or a portion of such securities, cash, investments and other items held by such institution. Any such securities, cash, investments and other items so received by the Collateral Agent or its designated agent shall (in the sole and absolute discretion of the Collateral Agent) be held as additional Collateral for the Secured Obligations or distributed in accordance with Section 9.

(ii) Upon the occurrence and during the continuance of any breach or default under any material License by any party thereto other than a Grantor, (A) the relevant Grantor will, promptly after obtaining knowledge thereof, give the Collateral Agent written notice of the nature and duration thereof, specifying what action, if any, it has taken and proposes to take with respect thereto, (B) no Grantor will, without the prior written consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, declare or waive any such breach or default or affirmatively consent to the cure thereof or exercise any of its remedies in respect thereof, and (C) each Grantor will, upon written instructions from the Collateral Agent and at such Grantor's expense, take such action as the Collateral Agent may reasonably deem necessary or advisable in respect thereof.

(iii) Each Grantor will, at its expense, promptly deliver to the Collateral Agent a copy of each notice or other communication received by it by which any other party to any material License (A) declares a breach or default by a Grantor of any material term thereunder, (B) terminates such License or (C) purports to exercise any of its rights or affect any of its obligations thereunder, together with a copy of any reply by such Grantor thereto.

(iv) Each Grantor will exercise promptly and diligently each and every right which it may have under each material License (other than any right of termination) and will duly perform and observe in all respects all of its obligations under each material License and will take all action reasonably necessary to maintain the Licenses in full force and effect. No Grantor will, without the prior written consent of the Collateral Agent, cancel, terminate, amend or otherwise modify in any respect, or waive any provision of, any material License.

(g) Provisions Concerning the Pledged Interests. Each Grantor will

(i) at the Grantors' joint and several expense, promptly deliver to the Collateral Agent a copy of each notice or other communication received by it in respect of the Pledged Interests;

(ii) at the Grantors' joint and several expense, defend the Collateral Agent's right, title and security interest in and to the Pledged Interests against the claims of any Person;

(iii) not make or consent to any material amendment or other material modification or waiver with respect to any Pledged Interests or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests (other than as permitted under the Transaction Documents); and

(iv) not permit the issuance of (A) any additional shares of any class of Equity Interests of any Pledged Issuer, (B) any securities convertible voluntarily by the holder thereof or automatically upon the occurrence or non-occurrence of any event or condition into, or exchangeable for, any such shares of Equity Interests or (C) any warrants, options, contracts or other commitments entitling any Person to purchase or otherwise acquire any such shares of Equity Interests.

(h) Transfers and Other Liens.

(i) No Grantor will sell, assign (by operation of Law or otherwise), lease, license, exchange or otherwise transfer or dispose of any of the Collateral, without the prior written consent of the Collateral Agent, except for transactions conducted in the ordinary course of business (which shall not include any real property), including the sale of securities the proceeds of which remain in a Deposit Account or Security Account subject to a control account agreement.

(ii) No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral, other than a Permitted Lien.

(i) Intellectual Property.

(i) Upon the request of the Collateral Agent, in order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office, each Grantor shall execute and deliver to the Collateral Agent one or more Copyright Security Agreements, Trademark Security Agreements, or Patent Security Agreements to further evidence the Collateral Agent's Lien on such Grantor's Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby.

(ii) Each Grantor shall have the duty, with respect to Intellectual Property that is necessary in the conduct of such Grantor's business, to protect and diligently enforce and defend at such Grantor's expense its Intellectual Property, including (A) to diligently enforce and defend, including, where it is commercially reasonable to, promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any material trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (C) to prosecute diligently any material patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, (D) to take all reasonable and necessary action to preserve and maintain all of such Grantor's Trademarks, Patents, Copyrights, Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of each Grantor who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment of Intellectual Property rights and obligations of confidentiality. Each Grantor further agrees not to abandon any Intellectual Property or Intellectual Property License that is necessary in the conduct of such Grantor's business. Each Grantor hereby agrees to take the steps described in this Section 6(i)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Grantor's business.

(iii) Grantors acknowledge and agree that the Secured Parties shall have no duties with respect to any Intellectual Property or Licenses of any Grantor. Without limiting the generality of this Section 6(i)(iii), Grantors acknowledge and agree that no Secured Party shall be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Licenses against any other Person, but any Secured Party may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of the Company.

(iv) Each Grantor shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is necessary in connection with the conduct of such Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by the Grantors.

(v) Each Grantor shall provide the Collateral Agent with a written report of all new Patents or Trademarks that are registered or the subject of pending applications for registrations, and of all Licenses that are material to the conduct of such Grantor's business, in each case, which were acquired, registered, or for which applications for registration were filed by any Grantor or entered into during the prior period and any statement of use or amendment to allege use with respect to intent-to-use trademark applications. In the case of such registrations or applications therefor, which were acquired by any Grantor, each such Grantor shall file the necessary documents with the appropriate Governmental Entity identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Intellectual Property. In each of the foregoing cases, the applicable Grantor shall promptly cause to be prepared, executed, and delivered to the Collateral Agent supplemental schedules to the applicable Transaction Documents to identify such Patent and Trademark registrations and applications therefor (with the exception of Trademark applications filed on an intent-to-use basis for which no statement of use or amendment to allege use has been filed) and Licenses as being subject to the security interests created thereunder.

(vi) Anything to the contrary in this Agreement notwithstanding, in no event shall any Grantor, either itself or through any agent, employee, licensee, or designee, file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency in another country without giving the Collateral Agent written notice thereof at least three Business Days prior to such filing and complying with Section 6(i)(i). Upon receipt from the United States Copyright Office of notice of registration of any Copyright, each Grantor shall promptly (but in no event later than three Business Days following such receipt) notify (but without duplication of any notice required by Section 6(i)(v)) the Collateral Agent of such registration by delivering, or causing to be delivered, to the Collateral Agent, documentation sufficient for the Collateral Agent to perfect the Collateral Agent's Liens on such Copyright. If any Grantor acquires from any Person any Copyright registered with the United States Copyright Office or an application to register any Copyright with the United States Copyright Office, such Grantor shall promptly (but in no event later than five Business Days following such acquisition) notify the Collateral Agent of such acquisition and deliver, or cause to be delivered, to the Collateral Agent, documentation sufficient for the Collateral Agent to perfect the Collateral Agent's Liens on such Copyright. In the case of such Copyright registrations or applications therefor which were acquired by any Grantor, each such Grantor shall promptly (but in no event later than five Business Days following such acquisition) file the necessary documents with the appropriate Governmental Entity identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Copyrights.

(vii) Each Grantor shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, the Intellectual Property that is necessary in the conduct of such Grantor's business, including as applicable (A) protecting the secrecy and confidentiality of its confidential information and trade secrets by having and enforcing a policy requiring all current employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements; (B) taking actions reasonably necessary to ensure that no trade secret falls into the public domain; and (C) protecting the secrecy and confidentiality of the source code of all software programs and applications of which it is the owner or licensee by having and enforcing a policy requiring any licensees (or sublicensees) of such source code to enter into license agreements with commercially reasonable use and non-disclosure restrictions.

(viii) No Grantor shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person unless such Grantor has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of Grantor thereunder) to the Collateral Agent (and any transferees of the Collateral Agent).

(j) Deposit, Commodities and Securities Accounts. Each Grantor shall cause each bank and other financial institution with an account referred to in Schedule VII to execute and deliver to the Collateral Agent (or its designee), subject to Section 6(l) and the Post-Closing Agreement, a control agreement, in form and substance satisfactory to the Collateral Agent, duly executed by such Grantor and such bank or financial institution, or enter into other arrangements in form and substance satisfactory to the Collateral Agent, pursuant to which such institution shall irrevocably agree, among other things, that (i) it will comply at any time with the instructions originated by the Collateral Agent (or its designee) to such bank or financial institution directing the disposition of cash, Commodity Contracts, securities, Investment Property and other items from time to time credited to such account, without further consent of such Grantor, which instructions the Collateral Agent (or its designee) will not give to such bank or other financial institution in the absence of a continuing Event of Default and which the Collateral Agent (or its designee) will immediately withdraw if no Event of Default is continuing, (ii) all cash, Commodity Contracts, securities, Investment Property and other items of such Grantor deposited with such institution shall be subject to a perfected, first priority security interest in favor of the Collateral Agent (or its designee), (iii) any right of set off (other than recoupment of standard fees), banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived as against the Collateral Agent (or its designee), and (iv) upon receipt of written notice from the Collateral Agent during the continuance of an Event of Default, such bank or financial institution shall promptly send to the Collateral Agent (or its designee) by wire transfer (to such account as the Collateral Agent (or its designee) shall specify, or in such other manner as the Collateral Agent (or its designee) shall direct) all such cash, the value of any Commodity Contracts, securities, Investment Property and other items held by it, provided, however, that arrangements will be made to allow any derivative contracts to be fulfilled. Without the prior written consent of the Collateral Agent, no Grantor shall make or maintain any Deposit Account, Commodity Account or Securities Account except for the accounts set forth in Schedule VII. The provisions of this Section 6(j) shall not apply to Excluded Accounts.

(k) Titled Collateral. At the request of the Collateral Agent, each Grantor shall (a) cause all Collateral, now owned or hereafter acquired by any Grantor, which under applicable Law are required to be registered and has a value in excess of $25,000, to be properly registered in the name of such Grantor, (b) cause all Titled Collateral with a value in excess of $25,000, to be properly titled in the name of such Grantor, and if requested by the Collateral Agent, with the Collateral Agent's Lien noted thereon and (c) if requested by the Collateral Agent, promptly deliver to the Collateral Agent (or its custodian) originals of all such Certificates of Title or certificates of ownership for such Titled Collateral a value in excess of $25,000, with the Collateral Agent's Lien noted thereon, and take such other actions as may be reasonably required by the Collateral Agent.

(l) Control. Each Grantor hereby agrees to take any or all action that may be necessary or desirable or that the Collateral Agent may request in order for the Collateral Agent to obtain control in accordance with Sections 9-104, 9-105, 9-106, and 9-107 of the Code with respect to the following Collateral: (i) Deposit Accounts, (ii) Securities Accounts (other than solely containing Excluded Assets), (iii) Electronic Chattel Paper, (iv) Investment Property and (v) Letter-of-Credit Rights. Each Grantor hereby acknowledges and agrees that any agent or designee of the Collateral Agent shall be deemed to be a "secured party" with respect to the Collateral under the control of such agent or designee for all purposes. Notwithstanding anything in this Agreement to the contrary, so long as no Event of Default has occurred and is then continuing, the Grantors shall not be required to maintain a control account agreement for the benefit of the Agent in respect of any Deposit Account that contains $25,000, individually, or $100,000, in the aggregate, or less in cash at any time; provided that any Deposit Account may contain in excess of $25,000/$100,000 for a period not to exceed two Business Days, so long as Grantors are making diligent efforts to transfer such cash or securities to a Deposit Account that is subject to a control account agreement, or obtain a deposit account control agreement covering such Deposit Account or Security Account within such applicable period.

(m) Records; Inspection and Reporting.

(i) Each Grantor shall keep adequate records concerning the Accounts, Chattel Paper and Pledged Interests. Each Grantor shall permit the Collateral Agent, or any agents or representatives thereof or such professionals or other Persons as the Collateral Agent may designate (A) to examine and make copies of and abstracts from such Grantor's books and records, (B) to visit and inspect its properties, (C) to verify materials, leases, notes, Accounts, Inventory and other assets of such Grantor from time to time, (D) to conduct audits, appraisals and valuations or examinations at the locations of such Grantor and (E) to discuss such Grantor's affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives, and otherwise as provided in the Purchase Agreement.

(ii) No Grantor shall, without the prior written consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, change (A) its name, identity or organizational structure, (B) its jurisdiction of incorporation or organization as set forth in Schedule I or (C) its chief executive office as set forth in Schedule VI. Each Grantor shall promptly notify the Collateral Agent upon obtaining an organizational identification number, if on the date hereof such Grantor did not have such identification number.

SECTION 7. Voting Rights, Dividends, Etc. in Respect of the Pledged Interests.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) each Grantor may exercise any and all voting and other consensual rights pertaining to any Pledged Interests for any purpose not inconsistent with the terms of this Agreement, the Purchase Agreement, the Notes or the other Transaction Documents; provided, however, that (A) each Grantor will give the Collateral Agent at least five Business Days' notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such right that could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Collateral Agent's Lien; and (B) none of the Grantors will exercise or refrain from exercising any such right, as the case may be, if the Collateral Agent gives a Grantor notice that, in the Collateral Agent's reasonable judgment, such action (or inaction) could reasonably be expected to adversely affect in any material respect the value, liquidity or marketability of any Collateral or the creation, perfection and priority of the Collateral Agent's Lien; and

(ii) each of the Grantors may receive and retain any and all dividends, interest or other distributions paid in respect of the Pledged Interests to the extent permitted by the Transaction Documents; provided, however, that any and all (A) dividends and interest paid or payable other than in cash in respect of, and Instruments and other property received, receivable or otherwise distributed in respect of or in exchange for, any Pledged Interests and (B) cash paid, payable or otherwise distributed in redemption of, or in exchange for, any Pledged Interests, together with any dividend, interest or other distribution or payment which at the time of such payment was not permitted by the Transaction Documents, shall be, and shall forthwith be delivered to the Collateral Agent, to hold as, Pledged Interests and shall, if received by any of the Grantors, be received in trust for the benefit of the Collateral Agent, shall be segregated from the other property or funds of the Grantors, and shall be forthwith delivered to the Collateral Agent in the exact form received with any necessary indorsement and appropriate stock powers duly executed in blank, to be held by the Collateral Agent as Pledged Interests and as further collateral security for the Secured Obligations; and

(iii) the Collateral Agent will execute and deliver (or cause to be executed and delivered) to a Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 7(a)(i) and to receive the dividends, interest or other distributions which it is authorized to receive and retain pursuant to Section 7(a)(ii).

(b) Upon the occurrence and during the continuance of an Event of Default:

(i) all rights of each Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 7(a)(i), and to receive the dividends, distributions, interest and other payments that it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii), shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right (but not the obligation) to exercise such voting and other consensual rights and to receive and hold as Pledged Interests such dividends, distributions and interest payments;

(ii) the Collateral Agent is authorized to notify each debtor with respect to the Pledged Debt to make payment directly to the Collateral Agent (or its designee) and may collect any and all moneys due or to become due to any Grantor in respect of the Pledged Debt, and each of the Grantors hereby authorizes each such debtor to make such payment directly to the Collateral Agent (or its designee) without any duty of inquiry;

(iii) without limiting the generality of the foregoing, the Collateral Agent may at its option exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Pledged Interests as if it were the absolute owner thereof, including without limitation, the right to exchange, in its discretion, any and all of the Pledged Interests upon the merger, consolidation, reorganization, recapitalization or other adjustment of any Pledged Issuer, or upon the exercise by any Pledged Issuer of any right, privilege or option pertaining to any Pledged Interests, and, in connection therewith, to deposit and deliver any and all of the Pledged Interests with any committee, depository, transfer agent, registrar or other designated agent upon such terms and conditions as it may determine; and

(iv) all dividends, distributions, interest and other payments that are received by any of the Grantors contrary to the provisions of Section 7(b)(i) shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of the Grantors, and shall be forthwith paid over to the Collateral Agent as Pledged Interests in the exact form received with any necessary indorsement and appropriate stock powers duly executed in blank, to be held by the Collateral Agent as Pledged Interests and as further collateral security for the Secured Obligations.

SECTION 8. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable Law, and for the purpose of taking any action that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Collateral Agent to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office, (ii) authorizes the Collateral Agent at any time and from time to time to file, one or more financing or continuation statements and amendments thereto, relating to the Collateral (including without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Collateral Agent may determine, regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Uniform Commercial Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Collateral Agent has filed any such financing statements, continuation statements, or amendments thereto, prior to the date hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by Law.

(b) Each Grantor hereby irrevocably appoints the Collateral Agent as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Collateral Agent's discretion, to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including without limitation, (i) to obtain and adjust insurance required to be paid to the Collateral Agent, (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (iii) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) or (ii) above, (iv) to receive, indorse and collect all Instruments made payable to such Grantor representing any dividend, interest payment or other distribution in respect of any Pledged Interests and to give full discharge for the same, (v) to file any claims or take any action or institute any proceedings which the Collateral Agent may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of each Secured Party with respect to any Collateral, (vi) to execute assignments, licenses and other documents to enforce the rights of each Secured Party with respect to any Collateral, (vii) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, and such payments made by the Collateral Agent to become Secured Obligations of such Grantor to the Collateral Agent, due and payable immediately upon demand, and (viii) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper and other documents relating to the Collateral. This power is coupled with an interest and is irrevocable until the date on which all of the Secured Obligations have been indefeasibly paid in full in cash.

(c) For the purpose of enabling the Collateral Agent to exercise rights and remedies hereunder, at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby (i) grants to the Collateral Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual Property now or hereafter owned by any Grantor, wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof; and (ii) assigns to the Collateral Agent, to the extent assignable, all of its rights to any Intellectual Property now or hereafter licensed or used by any Grantor. Notwithstanding anything contained herein to the contrary, but subject to the provisions of the Purchase Agreement that limit the right of a Grantor to dispose of its property and Section 6(i), so long as no Event of Default shall have occurred and be continuing, each Grantor may exploit, use, enjoy, protect, license, sublicense, assign, sell, dispose of or take other actions with respect to the Intellectual Property in the ordinary course of its business. In furtherance of the foregoing, unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time, upon the request of a Grantor, execute and deliver any instruments, certificates or other documents, in the form so requested, which such Grantor shall have certified are appropriate (in such Grantor's judgment) to allow it to take any action permitted above (including relinquishment of the license provided pursuant to this clause (c) as to any Intellectual Property). Further, upon the date on which all of the Secured Obligations have been indefeasibly paid in full in cash, the Collateral Agent (subject to Section 14(e)) shall release and reassign to the Grantors all of the Collateral Agent's right, title and interest in and to the Intellectual Property, and the Licenses, all without recourse, representation or warranty whatsoever and at the Grantors' sole expense. The exercise of rights and remedies hereunder by the Collateral Agent shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by any Grantor in accordance with the second sentence of this clause (c). Each Grantor hereby releases the Collateral Agent from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Collateral Agent under the powers of attorney granted herein other than actions taken or omitted to be taken through the Collateral Agent's gross negligence or willful misconduct, as determined by a final determination of a court of competent jurisdiction.

(d) If any Grantor fails to perform any agreement or obligation contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Collateral Agent, and the expenses of the Collateral Agent incurred in connection therewith shall be jointly and severally payable by the Grantors pursuant to Section 10 and shall be secured by the Collateral.

(e) The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Other than the exercise of reasonable care to assure the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Collateral and shall be relieved of all responsibility for any Collateral in its possession upon surrendering it or tendering surrender of it to any of the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct). The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property, it being understood that the Collateral Agent shall not have responsibility for ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters. The Collateral Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Collateral Agent in good faith.

(f) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise in respect of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Collateral Agent shall not have any obligation or liability by reason of this Agreement under the Licenses or otherwise in respect of the Collateral, nor shall the Collateral Agent be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(g) The Collateral Agent may at any time in its discretion (i) without notice to any Grantor, transfer or register in the name of the Collateral Agent or any of its nominees any or all of the Pledged Interests, and (ii) exchange certificates or Instruments constituting Pledged Interests for certificates or Instruments of smaller or larger denominations.

SECTION 9. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the benefit of each Secured Party, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under Law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices, at any exchange or broker's board or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable or (B) lease, license or otherwise dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of the Collateral shall be required by Law, at least ten (10) days' prior notice to the applicable Grantor of the time and place of any public sale or the time after which any private sale or other disposition of the Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against each Secured Party arising by reason of the fact that the price at which the Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Secured Obligations, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, and waives all rights that such Grantor may have to require that all or any part of the Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of the Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, (iii) the Collateral Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness), if permitted by Law, for the purchase, lease, license or other disposition of the Collateral or any portion thereof for the account of the Collateral Agent (on behalf of itself and each Secured Party) and (iv) such actions set forth in clauses (i), (ii) and (iii) above shall not adversely affect the commercial reasonableness of any such sale of the Collateral. In addition to the foregoing, (i) upon written notice to any Grantor from the Collateral Agent after and during the continuance of an Event of Default, such Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (ii) the Collateral Agent may, at any time and from time to time after and during the continuance of an Event of Default, upon ten (10) days' prior notice to any Grantor, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Collateral Agent shall in its sole discretion determine; and (iii) the Collateral Agent may, at any time, pursuant to the authority granted in Section 8 (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of a Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(b) In the event that the Collateral Agent determines to exercise its right to sell all or any part of the Pledged Interests pursuant to Section 9(a), each Grantor will, at such Grantor's expense and upon request by the Collateral Agent: (i) execute and deliver, and cause each issuer of such Pledged Interests and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary or, in the opinion of the Collateral Agent, advisable to register such Pledged Interests under the provisions of the Securities Act, and to cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by Law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the reasonable opinion of the Collateral Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto, (ii) cause each issuer of such Pledged Interests to qualify such Pledged Interests under the state securities or "Blue Sky" Laws of each jurisdiction, provided, that, such issuer shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the issuer to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction; and to use commercially reasonable efforts to obtain all necessary governmental approvals for the sale of the Pledged Interests, as reasonably requested by the Collateral Agent, (iii) cause each Pledged Issuer to make available to its securityholders, as soon as practicable, an earnings statement which will satisfy the provisions of Section 11(a) of the Securities Act, and (iv) do or cause to be done all such other acts and things as may be reasonably necessary to make such sale of such Pledged Interests valid and binding and in compliance with applicable Law.

(c) Notwithstanding the provisions of Section 9(b), each Grantor recognizes that the Collateral Agent may deem it impracticable to effect a public sale of all or any part of the Pledged Shares or any other securities constituting Pledged Interests and that the Collateral Agent may, therefore, determine to make one or more private sales of any such securities to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable to the seller than the prices and other terms which might have been obtained at a public sale and, notwithstanding the foregoing, agrees that if such private sales are made in a commercially reasonable manner, then the Collateral Agent shall have no obligation to delay the sale of any such securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the Securities Act. Each Grantor further acknowledges and agrees that any offer to sell such securities which has been (i) publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such an offer may be so advertised without prior registration under the Securities Act) or (ii) made privately in the manner described above to not less than fifteen bona fide offerees shall be deemed to involve a "public disposition" for the purposes of Section 9-610(c) of the Code (or any successor or similar, applicable statutory provision) as then in effect in the State of New York, notwithstanding that such sale may not constitute a "public offering" under the Securities Act, and that the Collateral Agent may, in such event, bid for the purchase of such securities.

(d) Any cash held by the Collateral Agent (or its agent or designee) as Collateral and all Cash Proceeds received by the Collateral Agent (or its agent or designee) in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral may, in the discretion of the Collateral Agent, be held by the Collateral Agent (or its agent or designee) as collateral for, or then or at any time thereafter applied (after payment of any amounts payable to the Collateral Agent pursuant to Section 10) in whole or in part by the Collateral Agent against, all or any part of the Secured Obligations in such order as the Collateral Agent shall elect, consistent with the provisions of the Purchase Agreement. Any surplus of such cash or Cash Proceeds held by the Collateral Agent (or its agent or designee) and remaining after the date on which all of the Secured Obligations have been indefeasibly paid in full in cash, shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(e) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which each Secured Party is legally entitled, the Grantors shall be jointly and severally liable for the deficiency, together with interest thereon at the highest rate specified in any applicable Transaction Document for interest on overdue principal thereof or such other rate as shall be fixed by applicable Law, together with the costs of collection and the reasonable fees, costs, expenses and other client charges of any attorneys employed by the Collateral Agent to collect such deficiency.

(f) Each Grantor hereby acknowledges that if the Collateral Agent complies with any applicable Law in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(g) The Collateral Agent shall not be required to marshal any present or future collateral security (including but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Collateral Agent's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that any Grantor lawfully may, such Grantor hereby agrees that it will not invoke any Law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such Laws.

(h) Each Grantor irrevocably and unconditionally:

(i) consents to the appointment of pre-judgment or post-judgment receiver with all of the same powers that would otherwise be available to the Grantors, including but not limited to the power to (A) hold, manage, control or dispose of the Collateral wherever located, (B) take any action with respect to the Collateral to the maximum extent permitted by Law and (C) conduct a public or private sale of any or all of the Grantors' right, title and interest in and to such Collateral, including any disposition of the Collateral to the Secured Parties in exchange for cancellation of all or a portion of the Obligations;

(ii) consents that any such receiver can be appointed without a hearing or prior notice to the Grantors, provided, however, that the Collateral Agent shall provide prompt notice to the Grantors after such appointment;

(iii) agrees not to oppose or otherwise interfere (directly or indirectly) with any effort by Collateral Agent to seek the appointment of a receiver;

(iv) waives any right to demand that a bond be posted in connection with the appointment of any such receiver, provided, however, that in the event that no bond is posted, the Collateral Agent shall be responsible for ; and

SECTION 10. Indemnity and Expenses.

(a) Each Grantor jointly and severally agrees to defend, protect, indemnify and hold harmless the Collateral Agent and each other Indemnitee from and against any and all claims, losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including without limitation, reasonable attorneys' fees, costs, expenses and disbursements) incurred by the Collateral Agent or such Indemnitee to the extent that they arise out of or otherwise result from or relate to or are in connection with this Agreement (including without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting solely and directly from the Collateral Agent's or such Indemnitee's gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction.

(b) Each Grantor jointly and severally agrees to pay to the Collateral Agent upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Collateral Agent and of any experts and agents (including without limitation, any collateral trustee which may act as agent of the Collateral Agent), which the Collateral Agent may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights of the Collateral Agent hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 11. Notices, Etc. All notices and other communications provided for hereunder shall be given in accordance with the notice provision of the Purchase Agreement.

SECTION 12. Security Interest Absolute; Joint and Several Obligations.

(a) All rights of the Secured Parties, all Liens and all obligations of each of the Grantors hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Purchase Agreement or the Notes, (ii) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Secured Obligations, or any other amendment or waiver of or consent to any departure from the Purchase Agreement or the Notes, (iii) any exchange or release of, or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Secured Obligations, or (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any of the Grantors in respect of the Secured Obligations. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(b) Each Grantor hereby waives (i) promptness and diligence, and (ii) any requirement that the Collateral Agent or any Secured Party protect, secure, perfect or insure any security interest or other lien on any property subject thereto or exhaust any right or take any action against any Grantor or any other Person or any collateral.

(c) All of the obligations of the Grantors hereunder are joint and several. The Collateral Agent may, in its sole and absolute discretion, enforce the provisions hereof against any of the Grantors and shall not be required to proceed against all Grantors jointly or seek payment from the Grantors ratably. In addition, the Collateral Agent may, in its sole and absolute discretion, select the Collateral of any one or more of the Grantors for sale or application to the Secured Obligations, without regard to the ownership of such Collateral, and shall not be required to make such selection ratably from the Collateral owned by all of the Grantors. The release or discharge of any Grantor by the Collateral Agent shall not release or discharge any other Grantor from the obligations of such Person hereunder.

SECTION 13. The Collateral Agent

(a) [Reserved]

(b) Powers and Duties. Each Investor irrevocably authorizes the Collateral Agent to take such action on such Investor's behalf and to exercise such powers, rights and remedies hereunder as are specifically delegated or granted to the Collateral Agent by the terms hereof and the other Transaction Documents, together with such powers, rights and remedies as are reasonably incidental thereto. The Collateral Agent shall have only those duties and responsibilities that are expressly specified herein or any other Transaction Documents. The Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The Collateral Agent shall not have, by reason hereof or any of the other Transaction Documents, a fiduciary relationship in respect of, or any fiduciary duties to, any Investor or any other Person; and nothing herein, expressed or implied, is intended to or shall be so construed as to impose upon the Collateral Agent any obligations in respect hereof except as expressly set forth herein. The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property.

(c) General Immunity.

(i) No Responsibility for Certain Matters. The Collateral Agent shall not be responsible to any Investor for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or for any representations, warranties, recitals or statements made herein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by the Collateral Agent to the Investors or by or on behalf of any Grantor to the Collateral Agent and the transactions contemplated hereby or for the financial condition or business affairs of the Grantor, or any other Person liable for the payment of any Secured Obligations, nor shall the Collateral Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Transaction Documents or as to the existence or possible existence of any Event of Default or to make any disclosures with respect to the foregoing.

(ii) Exculpatory Provisions. Neither the Collateral Agent nor any of its officers, partners, directors, employees, attorneys or agents shall be liable to the Investors for any action taken or omitted by the Collateral Agent under or in connection with any of the Transaction Documents except to the extent caused by the Collateral Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. The Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Transaction Documents or from the exercise of any power, discretion or authority vested in it hereunder unless and until the Collateral Agent shall have received instructions in respect thereof from the Investors and, upon receipt of such instructions from the Investors, the Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any debtor relief Laws. Without prejudice to the generality of the foregoing, (A) the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for a Grantor), accountants, experts and other professional advisors selected by it; and (B) no Investor shall have any right of action whatsoever against the Collateral Agent as a result of the Collateral Agent acting or (where so instructed) refraining from acting hereunder or any of the other Transaction Documents in accordance with the instructions of the Investors.

(iii) Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers under this Agreement by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 13 shall apply to any of the Affiliates of the Collateral Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 13 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Collateral Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against the Grantors and the Investors, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Collateral Agent and not to the Grantors, any Investor or any other Person and no Grantor, Investor, or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

(iv) Agent Entitled to Act as Investor. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Esousa in its individual capacity as an Investor. With respect to its financial advances to the Company, the Collateral Agent shall have the same rights and powers hereunder as any other Investor and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Investor" shall, unless the context clearly otherwise indicates, include the Collateral Agent in its individual capacity. The Collateral Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with any Grantor or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from such Grantor for services in connection herewith and otherwise without having to account for the same to Investors.

(d) Investors' Representations, Warranties and Acknowledgment.

(i) Each Investor represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Company and that it has made and shall continue to make its own appraisal of the creditworthiness of the Company. The Collateral Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Investors or to provide any Investor with any credit or other information with respect thereto, whether coming into its possession before the execution of this Agreement or at any time or times thereafter, and the Collateral Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information produced by the Company and subsequently provided to the Investors by the Company.

(ii) Each Investor, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each collateral document in existence on the date of this Agreement.

(e) Right to Indemnity. Each Investor, according to its pro rata amount of Notes, severally agrees to indemnify the Collateral Agent, to the extent that the Collateral Agent shall not have been reimbursed by the Grantors, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Collateral Agent in exercising its powers, rights and remedies or performing its duties hereunder, or otherwise in its capacity as the Collateral Agent in any way relating to or arising out of this Agreement; provided, no Investor shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Collateral Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to the Collateral Agent for any purpose shall, in the opinion of the Collateral Agent, be insufficient or become impaired, the Collateral Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

(f) Successor Collateral Agent. The Collateral Agent may resign at any time by giving prior written notice thereof to Investors and the Grantors, and the Collateral Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Grantors and the Collateral Agent signed by the Investors. The Collateral Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of the Grantors and the Investors and the Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Collateral Agent by the Grantors and the Investors or (iii) such other date, if any, agreed to by the Investors. Upon any such notice of resignation or any such removal, the Investors shall have the right, upon five Business Days' notice to the Collateral Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by the Investors or the Collateral Agent, any collateral security held by Collateral Agent on behalf of the Investors under the Collateral Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreements, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums and all of its right, title and interest in and to all other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreements, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created hereunder, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement. After any retiring or removed Collateral Agent's resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement, shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

(g) Withholding Taxes. To the extent required by any applicable law, the Collateral Agent may withhold from any payment to any Investor an amount equivalent to any applicable withholding tax attributable to the amount paid to that Investor. If the Internal Revenue Service or any other Governmental Entity asserts a claim that the Collateral Agent did not properly withhold tax from amounts paid to or for the account of any Investor because the appropriate form was not delivered or was not properly executed or because such Investor failed to notify the Collateral Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, or if the Collateral Agent reasonably determines that a payment was made to a particular Investor pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Investor (and not the other Investors) shall indemnify the Collateral Agent fully for all amounts paid, directly or indirectly, by the Collateral Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

(h) Collateral Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any debtor relief Laws relative to the Grantors, the Collateral Agent (irrespective of whether the principal of any Secured Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Collateral Agent shall have made any demand on the Grantors) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(ii) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Investors and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its respective agents and counsel and all other amounts due the Collateral Agent hereunder) allowed in such judicial proceeding; and

(iii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Investor to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Investors, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Collateral Agent, its agents and counsel, and any other amounts due the Collateral Agent hereunder out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Investors may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Collateral Agent to authorize or consent to or accept or adopt on behalf of any Investor any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Investor or to authorize the Collateral Agent to vote in respect of the claim of any Investor in any such proceeding.

SECTION 14. Miscellaneous.

(a) No amendment of any provision of this Agreement (including any Schedule attached hereto) shall be effective unless it is in writing and signed by each Grantor affected thereby and the Collateral Agent, and no waiver of any provision of this Agreement, and no consent to any departure by any Grantor therefrom, shall be effective unless it is in writing and signed by the Collateral Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Secured Parties to exercise, and no delay in exercising, any right hereunder or under any other Transaction Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Secured Parties provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by Law. The rights of the Secured Parties under any Transaction Document against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any other Transaction Document against such party or against any other Person, including but not limited to, any Grantor.

(c) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect, subject to paragraph (e) below, until the date on which all of the Secured Obligations have been indefeasibly paid in full in cash and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code, and shall inure, together with all rights and remedies of the Secured Parties hereunder, to the benefit of the Secured Parties and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Secured Parties may assign or otherwise transfer their respective rights and obligations under this Agreement and any other Transaction Document to any other Person pursuant to the terms of the Purchase Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Secured Parties herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to any Secured Party shall mean the assignee of any such Secured Party. None of the rights or obligations of any Grantor hereunder may be assigned or otherwise transferred without the prior written consent of the Collateral Agent, and any such assignment or transfer shall be null and void.

(d) Upon the date on which all of the Secured Obligations have been indefeasibly paid in full in cash, (i) subject to paragraph (e) below, this Agreement and the security interests and licenses created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder and (ii) the Collateral Agent will, upon the Grantors' request and at the Grantors' expense, without any representation, warranty or recourse whatsoever, (A) return to the Grantors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(e) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of the Secured Obligations, or any part thereof, is, pursuant to applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(f) Upon the execution and delivery, or authentication, by any Person of a security agreement supplement in substantially the form of Exhibit C hereto (each a "**Security Agreement Supplement**"), (i) such Person shall be referred to as an "**Additional Grantor**" and shall be and become a Grantor, and each reference in this Agreement to "Grantor" shall also mean and be a reference to such Additional Grantor, and each reference in this Agreement and the other Transaction Documents to "Collateral" shall also mean and be a reference to the Collateral of such Additional Grantor, and (ii) the supplemental Schedules I-XI attached to each Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I-XI, respectively, hereto, and the Collateral Agent may attach such Schedules as supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as supplemented pursuant hereto.

(g) **THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT THE VALIDITY AND PERFECTION OR THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST CREATED HEREBY, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.**

(h) **EACH GRANTOR HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT. EACH GRANTOR (i) GRANTS SUCH WAIVER AND CONSENTS KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, (ii) ACKNOWLEDGES THAT (A) THE UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE SECURED PARTIES IN CONNECTION WITH THE ENFORCEMENT OF THEIR RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER DOCUMENTS EXECUTED IN CONNECTION HEREWITH, AND (B) THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE SECURED PARTIES TO MAKE (AND COMMIT TO MAKE) THE LOAN TO THE COMPANY, AND (iii) AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH THE AGENTS OR INVESTORS IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL.**

(i) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be a Transaction Document and shall otherwise be subject to all of terms and conditions contained in Sections 11.5 and 11.6 of the Purchase Agreement, *mutatis mutandi*.

(j) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding with respect to this Agreement any special, exemplary, punitive or consequential damages.

(k) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(m) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

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IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

BITNILE HOLDINGS, INC.

By: _____
Name: Milton C. Ault, III
Title: Executive Chairman

BITNILE, INC.

By: _____
Name: William B. Horne
Title: Chief Executive Officer

AULT LENDING, LLC

By: _____
Name: David J. Katzoff
Title: Manager

ACCEPTED BY:

ESOUSA GROUP HOLDINGS, LLC, as Collateral Agent

By: _____
Name: Michael Wachs
Title: Managing Member

Exhibit 10.3

GUARANTY

This **GUARANTY** dated as of December 16, 2022 (as amended, supplemented or otherwise modified from time to time, this "**Guaranty**") is made by the undersigned (together with each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder, each a "**Guarantor**", and collectively, the "**Guarantors**"), in favor of the Agent (as defined below) for the benefit of the Investors (as defined below).

RECITALS

A. BitNile Holdings, Inc., a Delaware corporation (the "**Company**"), each party listed as a "Investor" in the Purchase Agreement referenced below (together with their respective successors and assigns, each a "**Investor**"), and Esousa Group Holdings LLC, a New York limited liability company, as agent for the Investors (the "**Agent**") and as an Investor, are parties to that certain Securities Purchase Agreement of even date herewith (as amended, supplemented or otherwise modified from time to time, the "**Purchase Agreement**"), pursuant to which, among other things, the Company shall issue certain Senior Secured Promissory Notes (as amended, supplemented or otherwise modified from time to time, and as replaced or refinanced from time to time, the "**Notes**") to the Investors.

B. The Notes are secured by that certain Security Agreement dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "**Security Agreement**").

C. Additionally, the Investors have requested, and the Guarantors have agreed, that the Guarantors shall execute and deliver to the Investors, a guaranty guaranteeing all of the obligations of the Company under the Purchase Agreement, the Notes and the other Transaction Documents until the Notes have been indefeasibly paid in full.

D. Pursuant to the Security Agreement, the Guarantors have granted to Agent, as agent for the Investors, a security interest in and lien on their assets to secure their respective obligations under this Guaranty.

E. Each Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefits, and is in the best interest of, such Guarantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and for other consideration, the sufficiency of which is hereby acknowledged, each Guarantor hereby agrees with each Investor as follows:

SECTION 1. Definitions. Reference is hereby made to the Purchase Agreement, the Notes and the other Transaction Documents for a statement of the terms thereof. All terms used in this Guaranty, which are defined in the Purchase Agreement and not otherwise defined herein, shall have the same meanings herein as set forth therein.

SECTION 2. **Guaranty.** The Guarantors hereby unconditionally and irrevocably, guaranty the punctual payment, as and when due and payable, by stated maturity or otherwise (after giving effect to any applicable grace or cure periods), of the Obligations and any other amounts now or hereafter owing by the Company in respect of the Purchase Agreement, the Notes and the other Transaction Documents (such obligations, to the extent not paid by the Company, being the "**Guaranteed Obligations**"; provided that, when the Notes have been indefeasibly paid in full pursuant to their terms, the term "Guaranteed Obligations" shall not include any of the foregoing obligations under the Purchase Agreement or any other Transaction Documents, and any remaining obligations under such Transaction Documents shall no longer be guaranteed hereby). Without limiting the generality of the foregoing, each Guarantor's liability hereunder shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Company to the Investors under the Purchase Agreement and the Notes but for the fact that they are unenforceable or not allowable due to the existence of any proceeding commenced by or against the Company or any Guarantor under any provision of the Bankruptcy Code (Title 11 of the United States Code) or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief, and all fees, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under any of the Transaction Documents, and any and all expenses (including reasonable counsel fees and expenses) reasonably incurred by the Investors or the Agent in enforcing any rights under this Guaranty, involving the Company, any other Grantor under the Security Agreement or any Guarantor hereunder (the "**Transaction Parties**").

SECTION 3. **Guaranty Absolute; Continuing Guaranty; Assignments.**

(a) The Guarantors guaranty that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Transaction Documents, regardless of any Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Investors with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce such obligations, irrespective of whether any action is brought against any other Transaction Party or whether any Transaction Party is joined in any such action or actions. The liability of any Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by law, any defenses it may now or hereafter have in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Transaction Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Transaction Document, including without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Transaction Party or otherwise;

(iii) any taking, exchange, release or non-perfection of any collateral with respect to the Guaranteed Obligations, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations; or

(iv) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Transaction Party.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by any Investor or any other Person upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made.

(b) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until the indefeasible payment in full in cash of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations) and (ii) be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of and be enforceable by the Agent, on behalf of the Investors and their respective successors, and permitted pledgees, transferees and assigns. Without limiting the generality of the foregoing sentence, the Agent and any Investor may pledge, assign or otherwise transfer all or any portion of its rights and obligations under and subject to the terms of any Transaction Document to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Agent and such Investor herein or otherwise, in each case as provided in the Transaction Documents. Notwithstanding the foregoing and for the avoidance of doubt, this Guaranty will expire and each Guarantor will be automatically released from its obligation hereunder without any further action by any Person upon the indefeasible payment in full in cash of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations).

SECTION 4. Waivers. To the extent permitted by applicable Law, each Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Agent exhaust any right or take any action against any Transaction Party or any other Person or any Collateral (as defined in the Security Agreement). In furtherance of the foregoing, each Guarantor acknowledges that this Guaranty is a guarantee of payment and note of collection. Each Guarantor further acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 4 is knowingly made in contemplation of such benefits. The Guarantors hereby waive any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

SECTION 5. **Subrogation.** No Guarantor may exercise any rights that it may now or hereafter acquire against any Transaction Party or any other Guarantor that arise from the existence, payment, performance or enforcement of any Guarantor's obligations under this Guaranty, including without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Investors or the Agent against any Transaction Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including without limitation, the right to take or receive from any Transaction Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until the indefeasible payment in full in cash of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations). If any amount shall be paid to a Guarantor in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations, such amount shall be held in trust for the benefit of the Investors and shall forthwith be paid ratably to the Investors to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Transaction Documents, or to be held as collateral for any Guaranteed Obligations thereafter arising. If (a) any Guarantor shall make payment to the Investors of all or any part of the Guaranteed Obligations, and (b) the Investors receive the indefeasible payment in full in cash of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), the Agent and the Investors will, at such Guarantor's request and expense, promptly execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 6. **Representations, Warranties and Covenants.**

(a) Each Guarantor hereby represents and warrants as of the date first written above as follows:

(i) Each Guarantor is (A) an individual with full capacity, who has knowledge and a complete understanding of the terms set forth in this Guaranty and each other Transaction Document to which Guarantor is a party, and has had the opportunity to consult with counsel regarding the terms, conditions, liabilities and obligations under this Guaranty; or (B)(1) a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization as set forth on the signature pages hereto, (2) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Guaranty and each other Transaction Document to which the Guarantor is a party, and to consummate the transactions contemplated hereby and thereby and (3) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the conduct of its business makes such qualification necessary except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

(ii) The execution, delivery and performance by each Guarantor of this Guaranty and each other Transaction Document to which such Guarantor is a party (A) in the case of a Guarantor that is an entity, have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (B) in the case of a Guarantor that is an entity, do not and will not contravene its Organization Documents, or any applicable Law or any material contractual restriction binding on the Guarantor or its properties and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its properties, and (C) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any material agreement, permit, license, authorization or approval applicable to it or its operations or any of its properties.

(iii) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by the Guarantor of this Guaranty or any of the other Transaction Documents to which the Guarantor is a party, other than expressly provided for in any of the Transaction Documents and the filing of any financing statements or similar matters needed in connection with the perfection of the Liens granted under the Transaction Documents.

(iv) Each of this Guaranty and the other Transaction Documents to which the Guarantor is or will be a party, when delivered, will be, a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar Laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(v) There is no pending or, to the knowledge of the Guarantor, threatened in writing action, suit or proceeding against the Guarantor or to which any of the properties of the Guarantor is subject, before any court or other Governmental Authority or any arbitrator that:

(A) if adversely determined, could reasonably be expected to have a Material Adverse Effect or

(B) relates to this Guaranty or any of the other Transaction Documents to which the Guarantor is a party or any transactions contemplated hereby or thereby.

(vi) The Guarantor (A) has read and understands the terms and conditions of the Purchase Agreement, the Notes and the other Transaction Documents, and (B) now has and will continue to have independent means of obtaining information concerning the affairs, financial condition and business of the Company and the other Transaction Parties, and has no need of, or right to obtain from the Agent or any Investor, any credit or other information concerning the affairs, financial condition or business of the Company or the other Transaction Parties that may come under the control of the Agent or any Investor.

SECTION 7. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Agent may, and is hereby authorized to, at any time and from time to time, without notice to the Guarantors (any such notice being expressly waived by each Guarantor) and to the fullest extent permitted by law, set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by any Investor to or for the credit or the account of any Guarantor against any and all obligations of the Guarantors now or hereafter existing under this Guaranty or any other Transaction Documents, irrespective of whether or not Agent shall have made any demand under this Guaranty or any other Transaction Document and although such obligations may be contingent or unmatured. Agent agrees to notify in writing the relevant Guarantor promptly after any such set-off and application made by such Investor, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agent under this Section 7 are in addition to other rights and remedies (including without limitation, other rights of set-off) which the Agent or any Investor may have under this Guaranty or any other Transaction Document in law or otherwise.

SECTION 8. **Notices, Etc.** All notices and other communications provided for hereunder shall be in writing and shall be mailed (by overnight mail or by certified mail, postage prepaid and return receipt requested), telecopied or delivered, if to any Guarantor, to the address for such Guarantor set forth on the signature page hereto, or if to any Investor, to it at its respective address set forth in the Purchase Agreement; or as to any Person at such other address as shall be designated by such Person in a written notice to such other Person complying as to delivery with the terms of this Section 8. All such notices and other communications shall be effective (i) if mailed (by certified mail, postage prepaid and return receipt requested), when received or three Business Days after deposited in the mails, whichever occurs first; (ii) if telecopied, when transmitted and confirmation is received, provided same is on a Business Day and, if not, on the next Business Day; or (iii) if delivered by hand, upon delivery, provided same is on a Business Day and, if not, on the next Business Day.

SECTION 9. **CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE**. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH GUARANTOR HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE INVESTORS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST EACH GUARANTOR IN ANY OTHER JURISDICTION. ANY GUARANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY GUARANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH GUARANTOR HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTY AND THE OTHER TRANSACTION DOCUMENTS.

SECTION 10. WAIVER OF JURY TRIAL, ETC. EACH GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS GUARANTY OR THE OTHER TRANSACTION DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS GUARANTY OR THE OTHER TRANSACTION DOCUMENTS, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH GUARANTOR CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY INVESTOR HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY INVESTOR WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH GUARANTOR HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE INVESTORS ENTERING INTO THE OTHER TRANSACTION DOCUMENTS.

SECTION 11. Taxes.

(a) All payments made by any Guarantor hereunder or under any other Transaction Document shall be made in accordance with the terms of the respective Transaction Document and shall be made without set-off, counterclaim, deduction or other defense. All such payments shall be made free and clear of and without deduction for any present or future Taxes, deductions, charges or withholdings and all liabilities with respect thereto, other than Excluded Taxes. If any Guarantor shall be required to deduct or to withhold any Taxes from or in respect of any amount payable hereunder or under any other Transaction Document:

(i) the amount so payable shall be increased to the extent necessary so that after making all required deductions and withholdings (including Taxes on amounts payable to any Investor pursuant to this sentence) each Investor receives an amount equal to the sum it would have received had no such deduction or withholding been made,

(ii) such Guarantor shall make such deduction or withholding,

(iii) such Guarantor shall pay the full amount deducted or withheld to the relevant taxation authority in accordance with applicable law, and

(iv) as promptly as possible thereafter, such Guarantor shall send the Agent an official receipt (or, if an official receipt is not available, such other documentation as shall be satisfactory to the Agent, as the case may be) showing payment. In addition, each Guarantor agrees to pay any Other Taxes.

(b) Each Guarantor hereby indemnifies and agrees to hold the Agent and each Investor (each an "**Indemnified Party**") harmless from and against Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 11, but excluding Excluded Taxes) paid by any Indemnified Party as a result of any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Agreement or any other Transaction Document, and any liability (including penalties, interest and expenses for nonpayment, late payment or otherwise) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted, except to the extent that such Taxes or Other Taxes are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. This indemnification shall be paid within 30 days from the date on which the Agent makes written demand therefor, which demand shall identify the nature and amount of such Taxes or Other Taxes and shall include a certification as to the amount of any such Taxes or Other Taxes by the Agent.

(c) If any Guarantor fails to perform any of its obligations under this Section 11, such Guarantor shall indemnify the Agent and each Investor for any taxes, interest or penalties that may become payable as a result of any such failure. The obligations of the Guarantors under this Section 11 shall survive the termination of this Guaranty and the payment of the Guaranteed Obligations and all other amounts payable hereunder.

(d) Any Investor that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Transaction Document shall deliver to the Company, at the time or times reasonably requested by the Company, such properly completed and executed documentation reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Investor, if reasonably requested by the Company, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company as will enable the Company to determine whether or not such Investor is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation shall not be required if in the Investor's reasonable judgment such completion, execution or submission would subject such Investor to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such, Investor.

(e) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any taxes as to which it has been indemnified pursuant to this Section 11 (including by the payment of additional amounts pursuant to this Section 11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant governmental refunding party with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant governmental refunding party) in the event that such indemnified party is required to repay such refund to such governmental refunding party. Notwithstanding anything to the contrary in this paragraph (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the indemnified party in a less favorable net after-tax position than the indemnified party would have been in if the tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its tax returns (or any other information that it deems confidential) to the indemnifying party or any other Person.

SECTION 12. Miscellaneous.

(a) Each Guarantor will make each payment hereunder in Dollars and in immediately available funds to each Investor, at such address specified by such Investor from time to time by notice to the Guarantors.

(b) No amendment or waiver of any provision of this Guaranty and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by each Guarantor and the Agent, on behalf of the Investors, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the Agent or any Investor to exercise, and no delay in exercising, any right hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or under any Transaction Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agent and the Investors provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by Law. The rights of the Agent and the Investors under any Transaction Document against any party thereto are not conditional or contingent on any attempt by the Agent or any Investor to exercise any of their respective rights under any other Transaction Document against such party or against any other Person.

(d) Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(e) This Guaranty shall (i) be binding on each Guarantor and Investor and their respective successors and assigns, and (ii) inure, together with all rights and remedies of the Agent and the Investors hereunder, to the benefit of the Agent and the Investors and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Agent and any Investor may assign or otherwise transfer its rights and obligations under the Purchase Agreement, the Notes or any other Transaction Document to any other Person in accordance with the terms thereof, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Agent or such Investor, as the case may be, herein or otherwise. None of the rights or obligations of any Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of the Agent on behalf of the Investors.

(f) Any subsidiary (whether by acquisition or formation) of any Guarantor shall execute and deliver to the Agent and the Investors a joinder to this Guaranty in form and substance reasonably satisfactory to the Agent and the Investors. Upon the execution and delivery of such a joinder by any such subsidiary, such subsidiary shall become a Guarantor hereunder with the same force and effect as if originally named a Guarantor herein. The execution and delivery of any agreement or instrument adding an additional Guarantor as a party to this Guaranty shall not require the consent of any Guarantor hereunder. The rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor hereunder, as though such new Guarantor had originally been named a Guarantor hereunder on the date of this Guaranty.

(g) This Guaranty reflects the entire understanding of the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.

(h) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(i) This Guaranty may be executed by each party hereto on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one agreement. Delivery of an executed counterpart by facsimile or other method of electronic transmission shall be equally effective as delivery of an original executed counterpart.

(j) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

SECTION 13. Receipt of Payments. Without limiting the obligations of the Guarantors under Section 2 of this Guaranty, if the Agent or any Investor receives from or on behalf of any Guarantor any amount under this Guaranty or any other Transaction Document in a currency other than the currency in which the Guaranteed Obligations are denominated (the "**Obligation Currency**"), including without limitation, by way of enforcement upon Collateral, the Agent and each Investor is hereby authorized to, and at its sole discretion may, convert such currency into the Obligation Currency for application to the Guaranteed Obligations in accordance with the Transaction Documents. The Guaranteed Obligations shall be satisfied only to the extent of the amount of the Obligation Currency received by the Agent or any Investor from such conversion of the Guaranteed Obligations

SECTION 14. Currency; Judgment. Without limiting and in addition to Section 13 of this Guaranty, if for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Guaranty it becomes necessary to convert into the currency of such jurisdiction (herein called the "**Judgment Currency**") any amount due hereunder in any currency other than the Judgment Currency, then conversion shall be made at the Exchange Rate prevailing on the Business Day before the day on which (a) the date of actual payment of the amount due, in case of any proceeding in the courts of any jurisdictions that could give effect to such conversion being made on such date, or (b) judgment is given in the case of any proceeding in the courts of any other jurisdiction. In the event that there is a change in the Exchange Rate prevailing between the Business Day before the day on which the judgment is given and the date of payment of the amount due, the Guarantors will, on the date of payment, pay such additional amounts (if any) as may be necessary to ensure that the amount paid on such date is the amount in the Judgment Currency which when converted at the exchange rate prevailing on the date of payment is the amount then due under this Guaranty. Any additional amount due from the Guarantors under this Section 14 will be due as a separate debt and shall not be affected by judgment being obtained for any other sums due under or in respect of any of the Transaction Documents.

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IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed by its respective duly authorized officer, as of the date first above written.

GUARANTORS:

AULT AND COMPANY, INC.

By: _____
Name: Milton Ault
Title: Chief Executive Officer

BITNILE, INC.

By: _____
Name: William Horne
Title: Chief Executive Officer

AULT LENDING, LLC

By: _____
Name: David Katzoff
Title: Manager

_____
Todd Ault, individually

Address for Notices to all Guarantors:
11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141
Attn: Milton C. Ault, III
Email.:

With a copy to:

100 Park Avenue, Suite 1658A, New York, NY 10017
Attn: Henry Nisser
Email.:

Exhibit 99.1

BitNile Holdings Obtains $14.7 Million in Secured Debt Financing to Support Private Equity Investment

Las Vegas, NV, December 19, 2022 – BitNile Holdings, Inc. (NYSE American: NILE), a diversified holding company ("**BitNile**" or the "**Company**") announced today that it borrowed $14.7 million of principal amount of a secured promissory note (the "**Note**") from an accredited investor and shareholder. The Note matures on March 16, 2023, although if the Company repays at least $12 million of principal payment on or before the maturity date, the Company may extend the maturity date by 45 days by paying a fee of 10% of the outstanding balance owed as of the original maturity date. The Note is secured by certain assets of the Company and various subsidiaries. The purchase price for the Note was $13.5 million, of which $12 million was paid in cash and $1.5 million was a non-accountable expense allowance.

The Loans are guaranteed by Ault Lending, LLC, a subsidiary of the Company ("**Ault Lending**"), Ault & Company, Inc., an affiliate of the Company, as well as Milton C. Ault, III, the Company's Executive Chairman and the Chief Executive Officer of Ault & Company, Inc.

The proceeds from the Note will be used for one of the Company's first private equity related investments, the previously announced agreement to purchase substantially all of the operating assets of Circle 8 Crane Services LLC ("**Circle 8**"), which is expected to close later today. The Company's investments in private equity and commercial real estate are led by
Christopher K. Wu, the President of the Company's subsidiary, Ault Alliance, Inc.

The Company's Founder and Executive Chairman, Milton "Todd" Ault, III said "Chris Wu and I are very pleased to close this financing related to what I believe will be a transformational acquisition of the crane operations of Circle 8, an expected key component of our initiatives in energy and infrastructure. We expect to repay the Note from funds from Ault Lending and proceeds from certain real estate transactions."

For more information on BitNile and its subsidiaries, BitNile recommends that stockholders, investors, and any other interested parties read BitNile's public filings and press releases available under the Investor Relations section at www.BitNile.com or available at www.sec.gov.

About BitNile Holdings, Inc.

BitNile Holdings, Inc. is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through its wholly and majority-owned subsidiaries and strategic investments, BitNile owns and operates a data center at which it mines Bitcoin and provides mission-critical products that support a diverse range of industries, including oil exploration, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, BitNile extends credit to select entrepreneurial businesses through a licensed lending subsidiary. BitNile's headquarters are located at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141; www.BitNile.com.

Forward-Looking Statements

This press release contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "believes," "plans," "anticipates," "projects," "estimates," "expects," "intends," "strategy," "future," "opportunity," "may," "will," "should," "could," "potential," or similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties. Forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update any of them publicly in light of new information or future events. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors. More information, including potential risk factors, that could affect the Company's business and financial results are included in the Company's filings with the U.S. Securities and Exchange Commission, including, but not limited to, the Company's Forms 10-K, 10-Q and 8-K. All filings are available at www.sec.gov and on the Company's website at www.BitNile.com.

BitNile Holdings Investor Contact:
IR@BitNile.com or 1-888-753-2235

Exhibit 99.2

BitNile Holdings' Subsidiary Announces the Closing of its Acquisition of the Assets of Circle 8 Crane Services

Las Vegas, NV, December 19, 2022 – BitNile Holdings, Inc. (NYSE American: NILE), a diversified holding company ("**BitNile**" or the "**Company**") announced today that Circle 8 Newco LLC, a newly formed indirect subsidiary of Ault Alliance, Inc. ("**Ault Alliance**"), a wholly owned subsidiary of the Company, has closed on its acquisition of substantially all of the operating assets of Circle 8 Crane Services LLC ("**Circle 8**").

Circle 8 was a crane rental and lifting solutions provider founded in 2007 and headquartered in Corpus Christi, TX with multiple locations throughout the South Central region of the U.S. It maintained a large modern fleet of mobile cranes for its customers' heavy lifting needs. In particular, Circle 8 provided crane operators, engineering, custom rigging and transportation services for oilfield, construction, commercial and infrastructure markets. Circle 8 maintained an industry leading safety record.

The Company's Founder and Executive Chairman, Milton "Todd" Ault, III said "We are very pleased to consummate this strategic acquisition. We believe the Circle 8 acquisition provides a significant growth platform and furthers our strategy of investing in private equity opportunities that provide operating cash flow. As previously disclosed, based on current market conditions, we believe that the assets of Circle 8 we acquired are on track to generate in excess of $40 million of annual revenue in 2023."

Ault Alliance's President, Christopher K. Wu said, "Todd and I are excited to close this private equity investment and look forward to supporting the expected growth of our crane operations."

For more information on BitNile and its subsidiaries, BitNile recommends that stockholders, investors, and any other interested parties read BitNile's public filings and press releases available under the Investor Relations section at www.BitNile.com or available at www.sec.gov.

About BitNile Holdings, Inc.

BitNile Holdings, Inc. is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through its wholly and majority-owned subsidiaries and strategic investments, BitNile owns and operates a data center at which it mines Bitcoin and provides mission-critical products that support a diverse range of industries, including oil exploration, defense/aerospace, industrial, crane rental, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, BitNile extends credit to select entrepreneurial businesses through a licensed lending subsidiary. BitNile's headquarters are located at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141; www.BitNile.com.

Forward-Looking Statements

This press release contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements generally include statements that are predictive in nature and depend upon or refer to future events or conditions, and include words such as "believes," "plans," "anticipates," "projects," "estimates," "expects," "intends," "strategy," "future," "opportunity," "may," "will," "should," "could," "potential," or similar expressions. Statements that are not historical facts are forward-looking statements. Forward-looking statements are based on current beliefs and assumptions that are subject to risks and uncertainties. Forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update any of them publicly in light of new information or future events. Actual results could differ materially from those contained in any forward-looking statement as a result of various factors. More information, including potential risk factors, that could affect the Company's business and financial results are included in the Company's filings with the U.S. Securities and Exchange Commission, including, but not limited to, the Company's Forms 10-K, 10-Q and 8-K. All filings are available at www.sec.gov and on the Company's website at www.BitNile.com.

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